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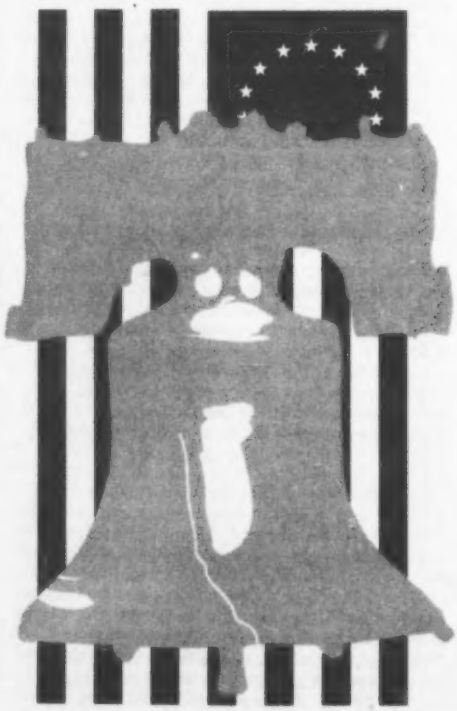
Withholding of Tax on Nonresident Aliens and Foreign Corporations

This publication is a reprint of the 1989 revision. However, an *Addendum to Publication 515* has been added to the end of this publication. The addendum updates this publication through September 1990.



Introduction

If you control, or are responsible for, the receipt, disposal, custody, or payment of the items of income discussed in this publication, you must withhold income tax on them. If you are required to withhold the tax, you become the taxpayer liable for its payment, especially if the alien who receives the income fails to satisfy the U.S. tax liability. You may be a tenant, manager, broker, agent, fiduciary, or spouse, but if you meet the withholding requirements, you are a withholding agent liable for the tax discussed here.

If you need information on a subject not covered in this publication, check our other free publications or write to: Internal Revenue Service, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024. To order publications and forms, call our toll-free number 1-800-829-FORM(3676).

Withholding of Tax

Most income that is ***effectively connected*** with the conduct of a trade or business in the United States by a nonresident alien or a foreign corporation is subject to the same income tax rates that apply to U.S. citizens, residents, and domestic corporations. For an explanation of effectively connected income, see *Definition of effectively connected income* discussed under *Withholding Exemptions and Reductions*, later.

Investment and other fixed or determinable annual or periodic income from sources within the United States, such as wages, rents, dividends, and interest, that is ***not effectively connected*** with the conduct of a trade or business in the United States is subject to a 30% tax rate, or lower treaty rate, whether or not the taxpayer also engages in a trade or business in the United States.

For example, you must withhold at 30%, or lower treaty rate, on payment of rents, dividends, interest, and other fixed or determinable annual or periodic income from sources within the United States. If this income is effectively connected with the conduct of a trade or business in the United States, the person entitled to the income may claim exemption from withholding by filing a statement to that effect with you. See *Form 4224*, discussed later.

Different withholding rules apply to a partnership's payments of effectively connected income to foreign partners, and to dispositions of U.S. real property interests by foreign persons. See *Partnership Withholding on Effectively Connected Income*, and *U.S. Real Property Interest*, later.

Withholding Agent

Any person required to withhold the tax is a withholding agent. A withholding agent may be an individual, a trust, estate, partnership, corporation, government agency, association, or tax-exempt foundation, whether domestic or foreign. Withholding agents include U.S. citizens and residents, and also foreign nominees and fiduciaries that are residents of treaty countries that require their nationals to withhold additional U.S. tax according to tax treaty provisions. Generally, the person who pays or conveys the item of U.S. source income to an alien entity or individual, or to the entity or individual's foreign or domestic agent, is liable for the tax and must withhold.

It does not matter on whose behalf the withholding agent makes the payments. An agent may be making payments on the agent's own behalf as a lessee or mortgagor of property, or other obligor, or an agent may be paying on behalf of another fiduciary, etc. If the withholding agent appoints a duly authorized agent to act on its behalf, the withholding agent is required to file a notice of the appointment with the Internal Revenue Service, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024. The notice must be filed before the first payment with respect to which the authorized agent is to act. If the duly authorized agent becomes insolvent or fails to deposit the withheld tax, the withholding agent is still liable.

For example, the local U.S. promoter of an entertainment event featuring a nonresident alien performer is usually the withholding agent. However, in the case of an extensive tour of the United States, a corporation or agency representing the performer may become the withholding agent for the entire tour if notice of the appointment is filed with the Internal Revenue Service.

Resident or domestic fiduciaries of trusts or estates are withholding agents on payments to beneficiaries who are nonresident alien individuals, foreign partnerships, or foreign corporations. Since the total amounts allocable to a beneficiary cannot be determined until the end of the tax year, the fiduciary must withhold tax on all distributions during the tax year. If tax is withheld before the income is actually distributed, withholding is not required when that income is later distributed.

The spouse of a nonresident alien, if the spouses are domiciled in a community property state, is required to act as a withholding agent for the nonresident alien's interest in the spouse's community income arising from within the United States.

A former spouse must withhold tax on alimony or other payments to the other former spouse, if the spouse receiving the payments is a nonresident alien at the time the payments are made.

Foreign nominees and fiduciaries. Under certain tax treaties, a foreign nominee or fiduciary in a treaty country may have to withhold additional U.S. tax from U.S. source dividends, interest, and other income.

For example, a Swiss nominee is required under Swiss law to withhold 30% of the gross dividend minus the 15% that has been withheld by the withholding agent in the United States.

Except for Canada, foreign nominees and fiduciaries must send the additional U.S. tax withheld to their own tax authorities, accompanied by whatever form may be prescribed by their national tax agencies. In turn, treaty tax authorities send the additional tax to the Internal Revenue Service Center, Philadelphia, PA 19255.

Canadian nominees and fiduciaries send the additional U.S. tax withheld, in U.S. currency, directly to the Internal Revenue Service Center in Philadelphia, accompanied by an annual Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*. The U.S. deposit rules, discussed later, do not apply to these foreign withholding agents.

For specific details on the procedures and types of U.S. source income on which additional withholding is required, foreign nominees and fiduciaries should contact the taxing authority of their country.

Persons Subject to Withholding

An individual who is not a U.S. citizen or resident is a nonresident alien. The term includes a nonresident alien fiduciary. Nonresident aliens are subject to the withholding provisions discussed in this publication.

Resident alien. An alien is considered a U.S. resident and not subject to the withholding provisions discussed in this publication if the alien meets either the green card test or the substantial presence test for the calendar year.

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Green card test. An alien is a resident if the individual was a lawful permanent resident of the United States at any time during the calendar year. This is known as the "green card" test because these aliens hold immigrant visas ("green cards").

Substantial presence test. An alien is also considered a U.S. resident if the individual meets the substantial presence test for the calendar year. Under this test, the individual must be physically present in the United States on at least:

1) 31 days during the current calendar year, and
2) 183 days during the current year and the 2 preceding years, counting all the days of physical presence in the current year, but only ⅓ the number of days of presence in the first preceding year, and only ⅙ the number of days in the second preceding year.

You generally do not count days the alien is in the United States as a teacher, student, or trainee on an "F," "J," or "M" visa.

For more information on resident and nonresident status, the tests for residence, and the exceptions to them, see Publication 519, *U.S. Tax Guide for Aliens.*

Nonresident alien individuals married to U.S. citizens or resident aliens may choose to be treated as resident aliens for income tax purposes. However, these individuals are considered nonresidents for purposes of withholding taxes on nonresident aliens.

A foreign corporation or partnership is one that does not fit the definition of a domestic corporation or partnership. A ***domestic corporation or partnership*** is one that was created or organized in the United States, or under the laws of the United States or of any state.

Guam or Northern Mariana Islands corporations. A corporation created or organized in, or under the laws of, Guam or the Commonwealth of the Northern Mariana Islands (CNMI) is not considered a foreign corporation for the purpose of withholding tax for the tax year if:

1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons, and
2) At least 20% of the corporation's gross income is derived from sources within Guam or the CNMI for the 3–year period ending with the close of the preceding tax year of the corporation (or the period the corporation has been in existence, if less).

Virgin Islands and American Samoa corporations. A corporation created or organized in, or under the laws of, the Virgin Islands or American Samoa is not considered a foreign corporation for the purposes of withholding tax for the tax year if:

1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons,
2) At least 65% of the corporation's gross income is effectively connected with the conduct of a trade or business in the Virgin Islands, American Samoa, Guam, the CNMI, or the United States for the 3–year period ending with the close of the tax year of the corporation (or the period the corporation or any predecessor has been in existence, if less), and
3) No substantial part of the income of the corporation is used, directly or indirectly, to satisfy obligations to a person who is not a bona fide resident of the Virgin Islands, American Samoa, Guam, the CNMI, or the United States.

Note: The provisions discussed above for *Virgin Islands and American Samoa corporations* are extended to Guam and CNMI corporations when an implementing agreement is in effect between the United States and each of those possessions. For further information, write to the Internal Revenue Service, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

Resident of Puerto Rico. Even if an alien is a bona fide resident of Puerto Rico for the entire year and is required to pay taxes generally in the same way as a U.S. citizen, the alien is treated as a nonresident alien for the withholding rules explained here. This alien will be entitled to a credit against U.S. income tax for any income tax withheld under these rules.

A nonresident alien trustee, administrator, or executor of a trust or an estate is treated as a nonresident alien, even though all the beneficiaries of the trust or estate are citizens or residents of the United States.

Foreign private foundation. A private foundation that was created or organized under the laws of a foreign country is a foreign private foundation. Gross investment income from sources within the United States paid to a qualified foreign private foundation is subject to withholding of a 4% excise tax rather than the ordinary statutory 30% income tax. For more information on foreign private foundations, see Publication 578, *Tax Information for Private Foundations and Foundation Managers.*

Other foreign organizations, associations, and charitable institutions. An organization is not precluded from being exempt from income tax under section 501(a) of the Internal Revenue Code merely because it was formed under foreign law. Generally, you do not have to withhold tax on payments of income to such foreign tax-exempt organizations if the Internal Revenue Service has determined that they are not foreign private foundations.

Payments to these organizations, however, must be reported on Form 1042S, *Foreign Person's U.S. Source Income Subject to Withholding,* even though no tax is withheld.

You must withhold tax on the unrelated business income (as described in Publication 598, *Tax on Unrelated Business Income of Exempt Organizations*) of foreign tax-exempt organizations in the same way that you would withhold tax on similar income of nonexempt organizations.

Withholding Exemptions and Reductions

You should withhold any required tax if facts indicate that the individual, or the fiduciary, to whom you are to pay the income is a nonresident alien. If you fail to withhold tax, you are still liable for payment of the tax, especially if the alien fails to satisfy the U.S. tax liability. However, the alien may be allowed an exemption from withholding or a reduced rate of withholding as explained here.

Evidence of residence. If an individual gives you a written statement, in duplicate, stating that he or she is a citizen or resident of the United States, and you do not know otherwise, you may accept this statement and are relieved from the duty of withholding the tax. Or, an alien may claim U.S. residence by filing with you, in duplicate, Form 1078, *Certificate of Alien Claiming Residence in the United States.* Holders of visas that do ***not*** permit permanent residence in the United States should write to the Internal Revenue Service, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, for advice about filing a Form 1078 and, if filing Form 1078 is proper, about the need to make estimated tax payments.

A U.S. bank that is a payer of income subject to withholding may decide whether to accept an individual's proof of U.S. citizenship or residence given through a foreign bank to which income is paid. If the U.S. bank accepts this proof, it will not be liable for payment of tax if later it is shown that the individual was in fact a nonresident alien. If it accepts the proof, however, the U.S. bank must file an information return on Form 1042S showing the name, address, identifying number, and the particular securities of the actual owner, and indicating that it is relying on proof submitted by the foreign bank as its basis for not withholding.

Partnerships and corporations. You may rely on a written statement from a partnership or corporation claiming that it is not foreign as proof that the partnership or corporation is domestic and thus not subject to withholding tax. The statement must be given to you in duplicate. It must contain the taxpayer's employer identification number, the address of the taxpayer's U.S. office or place of business, and it must be signed by a member of the partnership or by an officer of the corporation. The official title of the corporate officer also must be given.

Where to send statements and Form 1078. You must forward the duplicate copy of each statement or form, together with a letter of transmittal, to the Internal Revenue Service Center, Philadelphia, PA 19255. You must keep the original statement or form for your records.

Withholding exemption for undue administrative burden. No withholding is required from fixed or determinable annual or periodic income paid to a foreign partnership or corporation engaged in trade or business in the United States if the foreign partnership or corporation establishes, to the satisfaction of the district director in whose district the related books and records are kept, that withholding would impose an undue administrative burden for the tax year and that the collection of the tax will not be jeopardized by not withholding.

The withholding exemption is available to a foreign partnership or corporation only if it receives a determination from the district director stating that the exemption applies and provides you with a copy of the determination.

Generally, withholding will impose an undue administrative burden only if:

1) The person entitled to the income, such as a foreign insurance company, receives income from you on securities issued by a single corporation, some of which is, and some of which is not, effectively connected with the conduct of a trade or business within the United States, and
2) It is unduly difficult to determine the effective connection because of the circumstances under which the securities are held.

Withholding requirements for inhabitants of the Virgin Islands. You need not withhold tax on payments to a person who at the time of payment reasonably expects to meet the income tax obligations for that particular income under section 28(a) of the Revised Organic Act of the Virgin Islands. That section provides that all persons who are permanent residents of the Virgin Islands will meet their U.S. tax obligations by paying to the Virgin Islands their tax on income from all sources both within and outside the Virgin Islands. For this purpose the term "person" includes an individual, partnership, or corporation.

To avoid withholding, a payee must notify you by letter, in duplicate (a separate letter is required each year), that the payee expects to meet U.S. income tax obligations on all income to be paid by you during the calendar year under section 28(a) of the Revised Organic Act of the Virgin Islands. This letter of notification authorizes you to pay the income for the calendar year without deducting the tax. You must forward the duplicate copy of

ach letter of notification, with a letter of ransmittal, to the Internal Revenue Service, ssistant Commissioner (International), Attention: N:C:TPS, 950 L'Enfant Plaza South, S.W., Washngton, DC 20024.

Withholding on income effectively connected with a trade or bus'ness in the United States. Other than effectively connected taxable income f a partnership that is allocable to its foreign partners, or income from the disposition of a U.S. real roperty interest, you do not need to withhold tax n income if:

1) The income is effectively connected with the conduct of a trade or business in the United States (see definition, later) by the person entitled to the income,
2) The income is includible in the recipient's gross income, and
3) A statement claiming exemption, such as Form 4224, has been filed by the person entitled to the income, as discussed later.

This ***no withholding*** rule applies to income for ervices performed by a foreign partnership or foign corporation (other than a corporation escribed in the following discussion), but does ***ot*** apply to compensation for personal services erformed by an individual.

Despite the no withholding rule, you must withold tax from payments to a foreign corporation or services if all of the following apply:

1) The foreign corporation otherwise qualifies as a personal holding company for income tax purposes,
2) The foreign corporation receives amounts under a contract for personal services of an individual whom the corporation has ***no*** right to designate, and
3) 25% or more in value of the outstanding stock of the foreign corporation at some time during the tax year is owned, directly or indirectly, by or for an individual who has performed, is to perform or may be designated as the one to perform, the services called for under the contract.

Definition of effectively connected income. Generally, when a nonresident alien individual or oreign corporation engages in a trade or business n the United States, all income from sources ithin the United States other than fixed or deterinable annual or periodic income (such as ages, interest, dividends, and rent) and certain imilar amounts is considered effectively conected with a U.S. business. Fixed or determinale annual or periodic income and similar amounts ay or may not be effectively connected with a .S. business.

The factors to be considered in establishing hether fixed or determinable annual or periodic ncome and similar amounts from U.S. sources are ffectively connected with a U.S. trade or busiess include:

1) Whether the income is from assets used in or held for use in the conduct of that trade or business, or
2) Whether the activities of that trade or business were a material factor in the realization of the income.

Form 4224. Nonresident alien individuals, fiduiaries, foreign partnerships, or foreign corporaons engaged in trade or business in the United tates at any time during their tax year must notify ou as withholding agent as to the items of ncome for the tax year that will be effectively conected with a trade or business in the United tates. They can do this by using Form 4224, *Exemption from Withholding of Tax on Income ffectively Connected with the Conduct of a Trade r Business in the United States.*

Withholding on certain gambling winnings. Winnings of a nonresident alien from wagers on blackjack, baccarat, craps, roulette, or big-6 wheel are not subject to income tax or 30% withholding tax.

Investment Income of Foreign Governments and International Organizations

Investment income earned by a foreign government in the United States, subject to certain exceptions, is not included in the gross income of the foreign government and is not subject to U.S. withholding tax. Investment income means income from investments in the United States in stocks, bonds, or other domestic securities; financial instruments held in the execution of governmental financial or monetary policy; and interest on money deposited by a foreign government in banks in the United States.

Income received by a foreign government from the conduct of a commercial activity or from sources other than those stated above, is subject to withholding. In addition, income received from a controlled commercial entity (including gain from the disposition of any interest in a controlled commercial entity) and income received by a controlled commercial entity is subject to withholding.

International organizations are also exempt from withholding tax on income from investments in the United States in stocks, bonds, or other domestic securities, and from interest on money deposited in the United States.

Form 8709. Foreign governments and international organizations may file Form 8709, *Exemption From Withholding on Investment Income of Foreign Governments*, with you to claim exemption from withholding on investment income. Form 8709 is not required by the Internal Revenue Service, and there is no obligation on the foreign government or international organization to file the form with you, or on you to ask for the form to be filed. However, as the withholding agent, you must determine if the exemption from withholding is allowable. If you fail to obtain Form 8709 and fail to establish otherwise that the income was exempt from withholding, you will be liable for the tax.

You may request Form 8709 from the government or organization before you pay the income. If you do not receive a completed Form 8709, you may withhold. If you obtain Form 8709, you will be protected from liability except if either of the following applies:

1) You know or have reason to know that the government or organization is not eligible for the exemption from taxation under Internal Revenue Code section 892 either because it does not qualify as a foreign government or international organization, or the income does not qualify for the exemption, or
2) You know or have reason to know that any of the facts or assertions on Form 8709 may be false.

If you accept Form 8709 and later determine that one of the above situations applies, you must promptly notify, in writing, the Director, Office of Compliance, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024, and must withhold on any amounts not yet paid. You must also withhold if the office shown above notifies you that the government or organization or the income may not be eligible for exemption from taxation.

Do not send Form 8709 to the IRS. Keep the form for at least 4 years after the end of the year in which the income to which it applies is paid.

Treaty Benefits

Residents of certain foreign countries may be entitled to reduced rates of, or exemption from, tax under an applicable tax treaty between the country of which they are residents and the United States. These foreign residents, generally, must notify you as withholding agent that they are residents of a country with which the United States has an income tax treaty and that they, therefore, qualify for reduced rates of, or exemption from, income tax withholding.

The exemptions from, or reduced rates of, U.S. tax vary between countries and as to specific items of income. As a result, before disbursing this income, you must consult the provisions of the tax treaty that apply to the country of the nonresident taxpayer to whom you are making the payment.

If an applicable treaty does not cover a particular type of income or if no treaty exists with the country of which the alien is a resident, you must withhold on the income at the statutory rates shown in this publication. If the payment of income is covered by a treaty, however, you must follow the provisions of that treaty.

If a nonresident alien individual has made an election with his or her U.S. citizen or resident spouse to be treated as a U.S. resident for income tax purposes, the nonresident alien may not claim to be a foreign resident to obtain the benefits of a reduced rate of, or exemption from, U.S. income tax under an income tax treaty.

Tables at the end of this publication show the countries with which the United States has income tax treaties and the rates of withholding applicable in cases where all conditions of the particular treaty articles are satisfied.

Foreign payee's status. If, as a withholding agent, you are not able to easily determine the relationship between yourself and a foreign payee or the relationship of a foreign payee and a foreign corporation, you should withhold at a rate of 30%. The 30% rate also applies if you are unable to determine whether the alien is a nonresident or a resident of the United States.

Form 1001. A foreign payee may claim an exemption or reduced tax rate by filing Form 1001, *Ownership, Exemption, or Reduced Rate Certificate*. In the case of income (other than dividends and compensation for personal services) that is subject to a reduced rate of tax or exemption from withholding under an income tax treaty, the payee should file Form 1001 as soon as practicable for any period of 3 successive calendar years during which such income is expected to be received. For interest on coupon bonds, the payee should file the form each time a coupon is presented for payment.

The payee must use a separate Form 1001 for each type of income, except for income received from a trust, estate, or investment account. A payee who receives income from a trust, estate, or investment account uses a separate Form 1001 for each different trust, estate, or investment account, regardless of how many types of income are received.

If, after filing Form 1001, an owner ceases to be eligible for the benefits of the treaty for such income, the owner must promptly notify you as the withholding agent by letter. When any change occurs in the ownership of the income as recorded on the books of the payer, the exemption from, or reduction in the rate of, withholding of U.S. tax no longer applies unless the new owner of record also is entitled to a reduced or exempt rate of tax under a treaty and properly files Form 1001 with you.

If you have reason to know that an owner of income is not eligible for treaty benefits claimed on a Form 1001, you should disregard the form and withhold tax at the statutory rate. However, prior to the time when you have reason to have

such knowledge, you are not responsible for misstatements made on a Form 1001 by an owner of income.

Dividends. A foreign payee who receives only dividends does not need to file Form 1001. You generally may rely on the payee's address of record as the basis for allowing the benefit of an applicable income tax treaty.

However, foreign corporations that receive dividends from other foreign corporations with income effectively connected with a U.S. trade or business may need to file Form 1001 to obtain treaty exemption. See the *Form 1001 Instructions.*

Coupon bond interest. Since coupons for interest payable on bonds, debentures, and similar evidences of indebtedness (including tax-free covenant bonds) are payable to the bearer, you as the payer must ascertain each time a coupon is presented for payment whether the payee is subject to withholding.

Foreign payees ordinarily must file a separate Form 1001 each time they present a coupon for payment of interest for each issue of bonds of a corporation or each time they are paid interest on obligations of the United States or its agencies or instrumentalities.

Compensation for Personal Services

Most treaties to which the United States is a party provide for at least a partial exemption from tax for compensation for labor or personal services performed in the United States by a qualifying individual from the treaty country. In most cases, the qualifying individual must be a resident of the treaty country although, in some cases, the individual must be a citizen of the treaty country.

Under the treaty with Canada, for example, compensation received by a resident of Canada for personal services performed in the United States during the tax year is exempt from U.S. income tax if:

1) The Canadian resident is in the United States for not more than 183 days during the tax year, and the compensation is not deductible by an employer who is a U.S. resident or by a permanent establishment or a fixed base the employer has in the United States, or
2) The individual's total compensation for the year does not exceed $10,000.

Another provision found in many treaties exempts from U.S. tax compensation received by a professor or teacher from a treaty country who is present in the United States temporarily for a specified activity, but only compensation resulting from that specified activity. Still another provision contained in many treaties exempts from U.S. tax amounts received from abroad by a student or apprentice for maintenance or studies in the United States.

Refer to *Table 2* at the end of this publication for treaty provisions that provide for partial or complete exemption from U.S. income taxes for compensation paid for personal services rendered, compensation paid to certain persons teaching or engaging in research, and amounts received by students and trainees.

Claiming exemption from withholding. The person entitled to receive salaries, wages, or any other compensation for personal services performed within the United States must provide a statement to the withholding agent or employer to claim any exemption from either the 30% withholding or the graduated withholding.

Independent personal services. To qualify for an exemption from withholding because of a tax treaty, an individual who performs independent personal services (as distinguished from an employee) must submit Form 8233, *Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual,* to each withholding agent from whom amounts are to be received. Form 8233 must be filed for each tax year of the alien individual. All information required by the form must be provided. The exemption from withholding is effective for payments made at least 10 days after a copy of the accepted Form 8233 is forwarded to the Assistant Commissioner (International), Director, Office of Compliance, Internal Revenue Service, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, Attention: IN:C:E:62.

You, as the withholding agent, must forward one copy of the form to the director within 5 days of your acceptance of the form. See Form 8233 and its instructions for how to certify that you are accepting the Form 8233. Before accepting Form 8233, you must review it. If you know or have reason to know that any of the facts or assertions may be false, or that the eligibility of the individual's compensation for the exemption cannot be readily determined, you may not accept Form 8233 and you are required to withhold.

If you accept Form 8233 and later find that you should not have accepted it, you must promptly notify the Director, Office of Compliance, Assistant Commissioner (International), by letter and withhold on any amounts still to be paid. If you are notified by the Internal Revenue Service that the eligibility of the individual's compensation for the exemption is in doubt or is not eligible for the exemption, you are required to withhold.

You should keep a copy of Form 8233 for your records. You should give a copy to the nonresident alien individual and attach a copy to the Form 1042 that you file for that nonresident alien individual.

Students and teachers. Alien students, teachers, and researchers who perform dependent personal services can also use Form 8233 to claim exemption from withholding of tax on compensation for services that is exempt from U.S. taxation under a tax treaty.

The form must be completed following the form instructions and the specific guidelines provided in Revenue Procedure 87–8, 1987–1 C.B. 366 (for students), and Revenue Procedure 87–9, 1987–1 C.B. 368 (for teachers and researchers), and must then be submitted to the withholding agent for processing. Again, you, as the withholding agent, should provide the nonresident alien with a copy of Form 8233, and you should attach a copy of the Form 8233 to the Form 1042 that you file with the Internal Revenue Service. Keep a copy of the Form 8233 for your files.

Employees. A nonresident alien employee who claims an exemption from tax under a provision of the Internal Revenue Code or under an income tax treaty provision must file with the employer a statement for the tax year, in duplicate, giving name, address, and taxpayer identifying number and certifying:

1) The individual is not a citizen or resident of the United States, and
2) The compensation to be paid during the tax year is, or will be, exempt from income tax, giving the reason for the exemption.

If exemption from tax is claimed under an income tax treaty provision, the statement also must indicate the provision and tax treaty under which exemption is claimed, the country of which the employee is a resident, and enough facts to justify the claim for exemption. Although no particular form is prescribed for this statement, to establish an exemption under the Code or an income tax treaty, it must:

1) Be dated,
2) Identify the tax year for which it applies and the compensation to which it relates,
3) Contain the signature of the employee entitled to the compensation, and
4) Contain, or be verified by, a written declaration that it is made under the penalties of perjury.

The duplicate copy of each statement must be attached to the Form 1042 that you must file as the employer for such compensation.

Special events and promotions. Unless you have been specifically advised otherwise by letter from the Internal Revenue Service, you must withhold tax at the full 30% rate for payments that represent gate receipts (or television or other receipts) from rock music festivals, boxing promotions, and other entertainment or sporting events made to a nonresident alien or foreign corporation. One reason for this is that the partial or complete exemption provided by certain tax treaties usually is based upon factors not generally determinable until after the close of the tax year. Also, when an alien's services are provided by a foreign corporation, the qualification for tax treaty benefits may not be easily determined because of the need to resolve other issues such as:

1) The existence of an agency relationship rather than a bona fide employer-employee relationship,
2) The status of a foreign corporation as engaged or not engaged in trade or business in the United States, and
3) The possibility that business arrangements may amount to an assignment of income.

The required letter is issued by the Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024, Attention: IN:C:C:51.

Entertainers and athletes may also apply for reduced withholding on the basis of their net income after expenses. See *Central withholding agreements* later under *Compensation for independent personal services (Income Code 16).*

Income Subject to Withholding

Generally, fixed or determinable annual or periodic income from sources within the United States is subject to withholding. This includes interest, dividends, rents, salaries, wages, premiums, annuities, or other gains, profits or income unless specifically exempted under the Internal Revenue Code or a tax treaty.

Source of income. Generally, income is from U.S. sources if it is paid by domestic corporations and other noncorporate residents of the United States, or if the property that produces the income is located in the United States. Exceptions to these basic source rules and the withholding requirements are found in the separate discussions of each type of income subject to 30% withholding, later.

If the income is the result of personal service activity in the United States, it is from U.S. sources. The place where the services are performed determines the source of the income, regardless of where the contract was made, the place of payment, or the residence of the payer.

However, under certain circumstances, compensation for personal services performed in the United States is not considered income from sources within the United States. For more information on the requirements of this exception, see the discussion, *Compensation for dependent personal services,* later under *Compensation for Personal Services Performed.*

If the income is for personal services performed partly in the United States and partly outside the United States, you must make an accurate allocation of income for services performed in the United States. In most cases, you make this allocation on a time basis. That is, U.S. source income is the amount that results from multiplying the total amount of compensation by a fraction. The numerator of the fraction is the number of

days services are performed within the United States. The denominator of the fraction is the total number of days of service for which the compensation is paid.

Example. Jean Blanc, a citizen and resident of Canada, is employed as a professional hockey player by a U.S. hockey club. Under Jean's contract, he received $98,500 for 242 days of play during 1989. This includes days spent at pre-season training camp, days during the regular season, and playoff game days. Of the 242 days, 194 days were spent performing services in the United States and 48 days performing services in Canada. The amount of U.S. source income is $78,967 (194/242 × $98,500).

Territorial limits. Wages received for services rendered inside the territorial limits of the United States and wages of an alien seaman earned on a voyage along the coast of the United States are regarded as from sources in the United States, as are wages or salaries for personal services performed on a mine or oil or gas well located or being developed on the continental shelf of the United States.

Income from the performance of services directly related to the use of a vessel or aircraft is treated as derived entirely from sources in the United States if the use begins and ends in the United States. If the use is between the United States and a U.S. possession, half of the income is treated as derived from sources in the United States.

When withholding is not required. Even though income arises from sources in the United States, withholding is not required in the following general situations:

1) The income is effectively connected with the conduct of a trade or business in the United States (or, under a treaty, is attributable to a permanent establishment in the United States) by a foreign payee entitled to the income, who has filed a Form 4224 (or similar statement), giving the payee's U.S. taxpayer identifying number. (***This exception does not apply,*** however, to income from personal services performed by an individual or services performed by a foreign corporation that has personal holding company income under personal service contracts.)
2) The income is paid to a foreign payee who is entitled under a tax treaty to exemption from withholding on the specified type of income, and the payee has filed a Form 1001 or a Form 8233.
3) The income is not included in gross income under the Internal Revenue Code.
4) The income is transportation income.

Transportation income. Transportation income is not subject to 30% withholding. Transportation income is income from the use of a vessel or aircraft, whether owned, hired, or leased, or from the performance of services directly related to the use of a vessel or aircraft. U.S. source transportation income includes 50% of all transportation income from transportation that either begins or ends in the United States. The recipient of U.S. source gross transportation income must pay tax at the rate of 4% unless the income is effectively connected with the conduct of a trade or business in the United States. If the income is effectively connected with a U.S. trade or business, it is taxed on a net basis at a graduated rate of tax.

Fixed or determinable annual or periodic income. In general, every kind of fixed or determinable annual or periodic income from sources in the United States is subject to withholding unless specifically exempt under the Code or a tax treaty, or unless that income is effectively connected with a trade or business in the United States or, under a treaty, is attributable to a permanent establishment in the United States. The items of income subject to withholding include interest, dividends, rents, royalties, salaries, wages, premiums, annuities, compensation, gains, profits, and other kinds of income.

Income is fixed when it is paid in amounts known ahead of time. Income is determinable whenever there is a basis for figuring the amount to be paid. The income need not be paid annually if it is paid periodically, that is to say, from time to time, whether or not at regular intervals. The fact that a payment is not made annually or periodically does not, however, necessarily prevent its being fixed or determinable annual or periodic income.

A salesperson working by the month for a sales commission that is paid or credited monthly receives determinable periodic income. Such items as taxes, interest on mortgages, or premiums on insurance paid to or for a nonresident alien landlord by a tenant, under the terms of a lease, are fixed or determinable annual or periodic income.

Installment payments. It does not matter whether income is paid in a series of repeated payments or in a single lump sum. Thus, $5,000 in royalty income would come within the meaning of the term whether paid in 10 payments of $500 each or in one payment of $5,000.

Sale of property. Income from the sale of real or personal property in the United States is ***not*** fixed or determinable annual or periodic income and generally not subject to this withholding tax. However, see *U.S. Real Property Interest,* for a discussion of a separate withholding tax on certain sales.

Signing on. A fee paid to a professional soccer player, for example, for "signing on"—with the effect of preventing any other team from negotiating with the player and preventing the player from negotiating with any other team—is basically compensation for a covenant not to compete. The compensation is fixed or determinable annual or periodic income and the source is the place where the right to play is given up. Because the league is made up of both foreign and U.S. teams, the fee is from sources partly in and partly outside the United States. Therefore, the part of the fee that is from U.S. sources is subject to withholding. If there is no reasonable basis for an allocation of the fee, the entire sign-on fee is income from the United States and is subject to withholding.

Partnership distributions. A domestic partnership that earns fixed or determinable annual or periodic income during the tax year that is not effectively connected with a U.S. trade or business must withhold 30% (or lower treaty rate) on the distributive share of a foreign partner. This is true whether or not the foreign partner's distributive share has actually been distributed to the partner.

The partnership should withhold by the date on which partnership forms (Schedule K-1(Form 1065)) are sent to individual partners, but no later than the 15th day of the 3rd month after the close of the partnership's tax year.

Types of Income Subject to 30% Withholding

You must withhold tax at the rate of 30% on items of gross income from sources in the United States that are not effectively connected with a trade or business in the United States. You must withhold the tax at the time of paying the income to the nonresident alien individual, foreign partnership, or foreign corporation.

Each of the following kinds of fixed or determinable annual or periodic income is keyed to its identifying code number used on Form 1042S, and in most cases on *Tables 1 and 2* found at the end of this publication.

Interest

The following types of interest paid to foreign payees are generally subject to withholding.

Interest paid by U.S. obligors—general (Income Code 1). With specific exceptions, such as payments of portfolio interest, this category includes interest paid or credited on bonds, debentures, notes, open account indebtedness, governmental obligations issued on or after March 1, 1941, or other evidences of indebtedness of U.S. obligors (other than those specifically described later under Income Codes 2, 3, and 4). It also includes unstated interest on certain deferred payment arrangements as provided in Internal Revenue Code section 483. U.S. obligors include the U.S. Government or its agencies or instrumentalities and any U.S. resident.

If, in a sale of a corporation's property, payment of the bonds or other obligations of the corporation is assumed by the buyer, that buyer, whether an individual, partnership, or corporation, must deduct and withhold the taxes that would be required to be withheld by the selling corporation if there had been no such sale or transfer. Also, if interest coupons are in default, the tax must be withheld on the gross amount of interest whether or not the payment is a return of capital or the payment of income. Claims for refund may be filed.

A resident alien individual paying interest on a margin account maintained with a nonresident foreign brokerage firm must withhold from such interest whether the interest is paid directly or constructively.

A foreign tax-exempt organization may claim exemption from withholding of tax on bond interest coupons presented for payment in the United States, but will be subject to withholding for any tax year in which the organization is a private foundation.

Interest on bonds of a U.S. corporation paid to a foreign corporation not engaged in a trade or business in the United States is subject to withholding even though the interest is guaranteed by a foreign corporation that made payment outside the United States.

Domestic corporations must withhold on interest credited to foreign subsidiaries.

Original issue discount. Generally, foreign investors are subject to withholding on interest payments, other than portfolio interest, received from sources within the United States. If a bond or other evidence of indebtedness is an original issue discount obligation, the investor is also subject to withholding on the original issue discount accrued while such obligation was held by the nonresident investor. However, the original issue discount is taken into account only to the extent that such discount was not previously taken into account, and to the extent the tax on it does not exceed the payment less the tax on any interest included in the payment.

The term "original issue discount obligation" does not include any obligations payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer). It also does not include any obligation the interest on which is tax exempt under any provision of law without regard to the identity of the holder.

These provisions apply to obligations issued after March 31, 1972. Original issue discount on obligations issued before April 1, 1972, is not subject to withholding.

For more information on original issue discount, see Publication 550, *Investment Income and Expenses.*

The following types of interest of U.S. obligors are ***not*** subject to withholding even though paid to a foreign payee.

Interest on deposits. Interest paid or credited to a nonresident alien individual or foreign corporation from the following is not subject to withholding:

1) Deposits with persons carrying on the banking business,
2) Deposits or withdrawable accounts with savings institutions chartered and supervised under federal or state law as savings and loan or similar associations, such as credit unions, if the interest is or would be deductible by the institutions, or
3) Amounts left with an insurance company under an agreement to pay interest on them.

Deposits include certificates of deposit, open account time deposits, Eurodollar certificates of deposit, and other deposit arrangements.

Payer having income from abroad. In general, interest received from a resident alien individual or a domestic corporation is not subject to withholding if at least 80% of the payer's gross income from all sources has been from active foreign business for the 3 tax years of the payer before the year in which the interest is paid, or for the applicable part of those 3 years. However, limitations apply if the recipient is considered to be a related person. See sections 861(a) and 861(c) of the Internal Revenue Code.

Bankers' acceptances. Income of a foreign central bank of issue from bankers' acceptances is not subject to withholding. A foreign central bank of issue is a bank that has by law or government sanction the main authority, other than the government itself, to issue instruments intended to circulate as currency. Such a bank generally is the custodian of the banking reserves of the country under whose laws it is organized.

Sales of bonds between interest dates. You need not withhold tax on accrued interest paid by the buyer in connection with the sale of bonds between interest dates.

Income from U.S. Savings Bonds of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands. You need not withhold tax on interest from a Series E, Series EE, Series H, or Series HH U.S. Savings Bond if the nonresident alien individual acquired the bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

Interest on debt obligations with maturities of 15 years or less that the issuer elected to be subject to the interest equalization tax is not subject to withholding.

Interest on obligations of the United States received by a foreign central bank of issue or the Bank of International Settlements is not subject to withholding.

Portfolio interest. You need not withhold tax on portfolio interest. To qualify as portfolio interest, the interest must be otherwise subject to 30% withholding tax and must be paid on obligations issued after July 18, 1984, that meet certain requirements. Original issue discount may qualify as portfolio interest.

Obligations that are not registered. Portfolio interest includes interest paid on any obligation that is not in registered form (bearer obligations) and that is foreign-targeted. A bearer obligation is foreign-targeted if:

1) There are arrangements to ensure that the obligations will be sold, or resold in connection with the original issue, only to a person who is not a United States person,
2) Interest on the obligation is payable only outside the United States and its possessions, and
3) The face of the obligation contains a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws.

The interest on bearer obligations meeting these requirements is portfolio interest.

Registered obligations. Portfolio interest includes interest paid on an obligation that is in registered form, and for which the United States person (including a foreign paying agent of an issuer who is a United States person) who would otherwise be the withholding agent on such interest has received a statement that the beneficial owner of the obligation is not a United States person. The statement is made by the beneficial owner of the obligation, or a securities clearing organization, a bank, or other financial institution that holds customers' securities in the ordinary course of its trade or business.

If the obligation is not targeted to foreign markets, a statement made by the beneficial owner of the obligation must meet the following requirements:

1) It is signed by the beneficial owner under penalties of perjury,
2) It certifies that such owner is not a United States person, or if an individual, that the owner is not a citizen or a resident of the United States, and
3) It provides the name and address of the beneficial owner.

The statement may be made, at the option of the withholding agent, on a Form W–8, *Certificate of Foreign Status*, or on a substitute form. The beneficial owner must inform the withholding agent of any changes in the information on the statement within 30 days of such change.

If the obligation is not targeted to foreign markets, a statement by a financial institution must be signed under penalties of perjury by an authorized representative and must state that the institution has received from the beneficial owner a Form W–8 or a substitute form, or that it has received from another financial institution a similar statement that it, or another institution, has received a Form W–8 or a substitute form from the beneficial owner. The statement must provide the name and address of the beneficial owner and a copy of the Form W–8 provided by the beneficial owner must be attached.

The withholding agent who receives a statement must file a Form 1042S for the payment for which the statement is required for the calendar year in which payment is made. The statement (including Form W–8) must be attached to Form 1042.

Registered obligations targeted to foreign markets. The Form W–8 or substitute statement is not required for interest paid on a registered obligation that is targeted to foreign markets if the interest is paid by a United States person to a registered owner that is a financial institution at an address outside the United States. In this case, the interest is treated as portfolio interest if the withholding agent does not have actual knowledge that the beneficial owner is a United States person and receives a certificate, documentary evidence, or statement from a financial institution or member of a clearing organization, which member is the beneficial owner.

No particular form is required for the certificate or documentary evidence. However, see Temporary Regulation section 35a.9999–5(b), A–14, for what such certificate or documentary evidence must contain.

If no previous certificate for an obligation has been provided by the person providing the certificate, such certificate must be provided within the period beginning 90 days prior to the first interest payment date. If it is not received by the date 30 days prior to the payment, the withholding agent may withhold tax. Thereafter, the certificate must be filed within the period beginning January 15 and ending on January 31 of each year. For other information, see Temporary Regulation section 35a.9999–5(b), A–15.

If the withholding agent pays interest to the beneficial owner (neither a financial institution nor a member of a clearing organization), the owner must provide the withholding agent a Form W–8 or substitute statement. However, a withholding agent that is a foreign branch of a United States financial institution need not receive a Form W–8 or substitute statement provided that the withholding agent receives from the beneficial owner documentary evidence that the beneficial owner is not a United States person. See Temporary Regulation section 35a.9999–4, A–5, for what constitutes documentary evidence.

Documentary evidence must be provided within the period beginning 90 days prior to the first interest payment date. The beneficial owner must confirm the continuing validity of the documentary evidence within the period beginning 90 days prior to the first day of the third calendar year following the provision of such evidence.

A registered obligation is targeted to foreign markets if it is sold (or resold in connection with its original issuance) only to foreign persons or to foreign branches of United States financial institutions in accordance with procedures similar to those provided under Regulation section 1.163–5(c)(2)(i), and Temporary Regulation section 35a.9999–5(b), A–13.

Form 1042S is not required to be filed to report this interest on registered obligations targeted to foreign markets unless a Form W–8 or substitute statement is provided.

Nonqualifying payees. Interest paid to a 10% shareholder is not portfolio interest and does not qualify for the exemption from withholding. For an obligation issued by a corporation, a "10% shareholder" is any person who owns at least 10% of the total combined voting power of all classes of voting stock of such corporation. For an obligation issued by a partnership, a "10% shareholder" is any person who owns at least 10% of the capital or profits interest in such partnership. Generally, the constructive ownership of stock rules apply in determining if a person is a 10% shareholder of a corporation. Similar rules will apply in determining the ownership of the capital or the profits interest in a partnership.

For payments to foreign corporations, portfolio interest does not include interest that is paid to:

1) A bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business, except for interest paid on an obligation of the United States,
2) A 10% shareholder (described above), or
3) A controlled foreign corporation from a related person.

Note: For additional information on the portfolio interest exceptions, see sections 163, 165, 871, 881, and 1287 of the Internal Revenue Code and the regulations under those sections. For the latest information, write to the Internal Revenue Service, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

Interest on real property mortgages (Income Code 2). Because it is denied reduced rates or exemption under some tax treaties, interest paid or credited on real property mortgages is assigned a separate category for withholding purposes. This is interest paid on any type of debt instrument that is secured by a mortgage or deed of trust on real property located in the United States, regardless of whether the mortgagor (or grantor) is a U.S. citizen or a U.S. business entity.

Interest paid to controlling foreign corporations (Income Code 3). Under some tax treaties, such as those with Greece and Ireland, interest paid by a U.S. corporation to a controlling foreign corporation is denied a reduced rate or exemption

from withholding. This is interest that is paid or credited by a domestic corporation (as contrasted with a resident foreign corporation) on borrowings from a controlling foreign corporation. The interest may be on any type of debt including open or unsecured accounts payable, notes, certificates, bonds, or other evidences of indebtedness. A controlling foreign corporation is a corporation of the treaty country that controls, directly or indirectly, more than 50% of the entire voting power of the paying corporation.

Interest paid by foreign corporations (Income Code 4). If a foreign corporation is engaged in a trade of business in the United States, any interest paid by the foreign corporation's U.S. trade or business is subject to withholding.

Statutory. In the absence of an applicable treaty provision or exemption under the Code, you must withhold tax at the statutory rate of 30% on the interest paid by a foreign corporation's U.S. trade or business.

Tax treaties. There are different treaty provisions that apply to interest paid by foreign corporations. These provisions may exempt all or a part of this interest. Some treaties provide for an exemption regardless of the payee's residence or citizenship; others provide for an exemption according to the payee's status as a resident or citizen of the payer's country.

A foreign corporation that pays interest must be a qualified resident of its country of residence to be entitled to treaty benefits with respect to that interest. A foreign corporation that receives interest paid by a foreign corporation must be a qualified resident of its country of residence to be entitled to benefits under that country's tax treaty.

You should check the specific treaty provision. *Table 3* at the end of this publication provides a list of the tax treaties and the Internal Revenue Cumulative Bulletins in which they appear.

Interest on tax-free covenant bonds (Income Code 5). Different withholding rates apply to interest on bonds and other obligations issued before 1934 that contain a tax-free covenant. A tax-free covenant is an agreement of the obligor to pay or reimburse any part of the bondholder's income tax on the interest. These withholding rates are shown in *Table 1* at the end of this publication. Interest on tax-free covenant bonds issued after 1933 is subject to the general withholding provisions and rates just discussed in the other interest categories.

Dividends

The following types of dividends paid to foreign payees are generally subject to withholding.

Dividends paid by U.S. corporations—general (Income Code 6). This category includes all distributions of domestic corporations (other than dividends paid by a U.S. subsidiary corporation to a foreign parent corporation—Income Code 7).

Subject to certain exceptions, you must withhold tax on the gross amount of all corporate distributions paid to nonresident payees, to the extent treated as gross income from sources within the United States.

Corporate distributions. You need not withhold tax on a nontaxable distribution payable in stock or stock rights, or a distribution that is treated as a distribution in part or full payment in exchange for stock. If part of the distribution is taxable, you must withhold on the entire distribution.

You must withhold tax on a cash distribution made by a domestic corporation in the ordinary course of its business with respect to its stock to foreign shareholders. You must withhold even though it may be later determined that part or all of the distribution is a return of capital or a gain from the sale or exchange of property.

A claim for refund, with appropriate supporting evidence, may be filed for the excess payment.

Capital gain dividends paid by a regulated investment company or real estate investment trust are not subject to withholding.

Dividends paid to a shareholder whose status is not definite. If the shareholder's address is in the United States, you may assume that the shareholder is a citizen or resident of the United States or a domestic partnership or corporation. In that case, you need not withhold tax. Unless the facts and circumstances indicate clearly that the shareholder is a nonresident alien, foreign partnership, or foreign corporation, an address in care of another person in the United States does not of itself warrant treating the shareholder as a nonresident alien, foreign partnership, or foreign corporation.

However, if you do not definitely know the status of a shareholder, you must withhold the tax if the shareholder's address is outside the United States. If a shareholder changes from an address outside the United States to an address in the United States, you must withhold the tax unless proof is given to you showing that the individual is a citizen or resident of the United States. (Proof of residence or of U.S. citizenship may be given by furnishing a statement or filing Form 1078, as previously discussed under *Withholding Exemptions and Reductions.*)

You must withhold tax on dividends to foreign shareholders at rates in effect on the date the dividend check is first issued even if the check is delivered when a new rate is in effect.

Dividends paid by a domestic corporation (an "80/20" company). Generally, a percentage of any dividend paid by a domestic corporation that received at least 80% of its gross income from all sources from an active foreign business for the testing period (the 3 tax years before the year in which the dividends are declared, or shorter period if the corporation was not in existence for 3 years) is not subject to withholding. The percentage is found by dividing the corporation's foreign gross income for the testing period by the corporation's total gross income for that period. See sections 871(i)(2)(B) and 881(d) of the Internal Revenue Code.

Dividends paid by a domestic corporation that generally conducts its main business activities in a possession and that has chosen the Puerto Rico and possession tax credit are not subject to withholding.

The dividends-received deduction. The dividends-received deduction for corporations does not reduce the amount subject to withholding. Figure the withholding on the total amount of the dividend payment.

If stock is owned jointly by a nonresident alien individual and the U.S. citizen spouse of such individual, you must withhold tax only on the amount of the dividends paid to the nonresident alien.

Dividends paid by U.S. subsidiaries to foreign parent corporations (Income Code 7). Under certain tax treaties, dividends from a U.S. subsidiary corporation to a foreign parent corporation are given reduced withholding rates. Accordingly, these dividends are a separate category for purposes of correctly applying the withholding rules.

Under some treaties, the rate is reduced only if the foreign parent corporation is subject to tax on the dividends in the foreign country or only if the subsidiary corporation's dividend and interest income does not exceed a certain percentage of its total income. The percentage of stock ownership that the parent is required to have in the subsidiary corporation to qualify its dividends also may vary from treaty to treaty.

Dividends paid by foreign corporations (Income Code 8). Dividends paid by a foreign corporation with 25% or more of its gross income from all sources effectively connected (or treated as effectively connected) with a trade or business in the United States, for the 3 tax years (or shorter period) before the year in which the dividends are paid, are generally subject to withholding in the same ratio that the effectively connected (or treated as effectively connected) gross income has to the total gross income of the foreign corporation. If less than 25% of the corporation's gross income is effectively connected (or treated as effectively connected) with a U.S. trade or business for the 3-year (or shorter) period, then the dividends are not subject to withholding.

Corporation subject to branch profits tax. If a foreign corporation is subject to branch profits tax for any tax year, withholding is not required on any dividends paid by the corporation out of its earnings and profits for that tax year.

Dividends are subject to withholding if they are paid out of pre-1987 earnings and profits, or if they are attributable to any earnings and profits when the branch profits tax is prohibited by a tax treaty.

Statutory. In the absence of an applicable treaty provision or exemption under the Internal Revenue Code, you must withhold tax at the statutory rate of 30%.

Tax treaties. There are different treaty provisions that apply to dividends paid by foreign corporations. These provisions may exempt all or a part of these dividends. Some treaties provide for an exemption regardless of the payee's residence or citizenship; others provide for an exemption according to the payee's status as a resident or citizen of the payer's country.

A foreign corporation that pays dividends must be a qualified resident of its country of residence to be entitled to treaty benefits with respect to those dividends. A foreign corporation that receives dividends paid by a foreign corporation must be a qualified resident of its country of residence to be entitled to benefits under that country's tax treaty.

You should check the specific treaty provision. *Table 3* at the end of this publication provides a list of the tax treaties and the Internal Revenue Cumulative Bulletins in which they appear.

Certain Gains

Certain gains are subject to withholding.

Caution: As this publication was being prepared for print, Congress was considering legislation that would require withholding of tax at a 10% rate on the amount realized on the sale of stock in a domestic corporation by a foreign investor who is a 10% shareholder. For information on any late legislative changes, get Publication 553, *Highlights of 1989 Tax Changes.*

Capital gains (Income Code 9). Generally, you need not withhold tax on income from the sale in the United States of real or personal property because it is not fixed or determinable annual or periodic income. However, if a disposition of a U.S. real property interest by a foreign person is involved, see the discussion under *U.S. Real Property Interest,* later. Also, you must withhold at 30% on the gross amount of the following items:

1) Gains on lump-sum distributions from exempt employees' pension, profit-sharing, or stock bonus trusts,
2) Gains on lump-sum payments under certain qualified employee annuity plans,
3) Gains on disposal of timber, coal, or domestic iron ore with a retained economic interest, unless an election is made to treat such gains as income effectively connected with a trade or business in the United States,

4) Gains on contingent payments received from the sale or exchange of patents, copyrights, and similar property after October 4, 1966,

5) Gains on certain transfers of all substantial rights to, or an undivided interest in, patents if the transfers were made before October 5, 1966, and

6) Gains from original issue discount obligations issued after March 31, 1972. In the case of a sale or exchange of an original issue discount obligation, you must withhold tax on the amount of the original issue discount accruing while the obligation was held by the nonresident alien individual or foreign corporation. The amount of the original issue discount accruing does not include amounts previously taken into account as discussed earlier under *Interest.*

If you do not know the amount of the gain, you must withhold an amount necessary to assure that the tax withheld will not be less than 30% of the recognized gain. The amount to be withheld, however, must not be more than 30% of the amount payable because of the transaction.

Unless you have reason to believe to the contrary, you may rely upon the written statement of the person entitled to the income as to the amount of the gain. The statement, prepared according to regulations, must show the computation of the gain and must be given to you in duplicate. You must forward the duplicate copy of the statement along with Form 1042 that you file as withholding agent.

Royalties

In general, you must withhold tax on the payment of royalties from sources in the United States. However, certain types of royalties are given reduced rates or exemptions under some tax treaties. Accordingly, these different types of royalties are treated as separate categories for withholding purposes.

Industrial royalties (Income Code 10). This category of income includes royalties for the use of, or for the privilege of using, patents, trademarks, secret processes and formulas, goodwill, franchises, "know-how," and similar rights. It also may include rents for the use or lease of personal property. (This category does not include royalties described under Income Codes 11, 12, and 13.)

Motion picture or television copyright royalties (Income Code 11). This category refers to rentals paid for the use of motion picture and television copyrights.

Other royalties (e.g., copyright, recording, publishing) (Income Code 12). This category refers to the royalties paid for the use of copyrights on books, periodicals, articles, etc., except motion picture and television copyrights.

Real Property Income

The following rules apply to withholding on real property income of foreign payees.

Real property income and natural resources royalties (Income Code 13). You must withhold tax on income from real property located in the United States and held for the production of income, unless the foreign payee elects to treat this income as effectively connected with a trade or business in the United States. If the foreign payee chooses to have this income treated as effectively connected, the payee must file Form 4224. This real property income includes royalties from mines, wells, or other natural deposits, as well as ordinary rents for the use of real property. It does not include gains from disposition of U.S. real property interests.

Pensions, Annuities, and Alimony

The following rules apply to withholding on pensions, annuities, and alimony of foreign payees.

Pensions, annuities, alimony, and/or insurance premiums (Income Code 14). Generally, you must withhold tax on the gross amount of ***pensions and annuities*** that you pay. However, most tax treaties provide that private pensions and annuities are exempt from withholding.

A pension paid to a nonresident alien as a result of services performed by the alien in the United States is treated as income effectively connected with a U.S. trade or business. This income is generally subject to graduated withholding under the pension withholding rules of Code section 3405. See Publication 15, Circular E, *Employer's Tax Guide,* for information on these rules.

Each individual who receives a pension fills out Form W-4P, *Withholding Certificate for Pension or Annuity Payments,* to claim withholding allowances and to show marital status for withholding purposes. When the nonresident alien completes Form W-4P, only "Single" marital status should be checked and only one withholding allowance is allowed, unless the alien is a resident of Canada or Mexico, or a U.S. national.

Under section 3405, an alien may elect not to have tax withheld on periodic pension payments or nonperiodic pension distributions.

However, if the alien makes this no withholding election, the pension income is subject to the 30% (or lower treaty rate) withholding tax.

No withholding. In any case, you, as the payer of an annuity, need not withhold tax on an annuity payment to a nonresident alien if at the time of the first payment from the plan, 90% or more of the employees eligible for benefits under the plan are citizens or residents of the United States and the payment is:

1) Because of the nonresident's personal services performed outside the United States, or

2) Because of personal services for—

   a) A nonresident alien individual, foreign partnership, or foreign corporation not engaged in a trade or business in the United States, or

   b) An office or place of business of a U.S. resident or citizen which is maintained outside the United States.

If the payment otherwise qualifies under these rules, but less than 90% of the employees eligible for benefits are citizens or residents of the United States, you still need not withhold tax on the payment if:

1) The recipient is a resident of a country that gives a substantially equal exclusion to U.S. citizens and residents, or

2) The recipient is a resident of a beneficiary developing country under the Trade Act of 1974.

If you, as the withholding agent, are not the employer who established the annuity plan, the person entitled to the payments must file a statement with you in order for the exemption to apply. The statement must:

1) Be filed in duplicate for each tax year in which an annuity payment is made,

2) Contain the annuity owner's name, address, and taxpayer identification number, if any, and

3) Certify that the person entitled to the annuity is not a citizen or resident of the United States and that the annuity income is excluded from gross income under Internal Revenue Code section 871(f).

The statement must be dated and signed, must identify the tax year to which it relates, and must either contain, or be accompanied by, a written declaration that it is made under penalties of perjury. You must attach the duplicate copy of the statement to the Form 1042 with respect to the annuity for the taxable year.

Alimony payments. Generally, alimony payments made by U.S. residents to nonresident aliens are taxable and subject to withholding whether the recipients are residing abroad or are temporarily present in the United States.

Many tax treaties, however, provide for an exemption from withholding for alimony payments. Treaties with a provision for alimony payments are shown in *Table 1,* by a footnote reference, under *Income code number 14.*

Alimony payments made to a nonresident alien by a U.S. ancillary administrator of a nonresident alien estate are not from sources within the United States and are not subject to withholding.

Compensation for Personal Services Performed

You generally must withhold tax at the 30% rate on compensation you pay to a nonresident alien individual for labor or personal services performed in the United States, unless that compensation is specifically exempted from withholding or subject to graduated withholding. This rule applies regardless of your place of residence, the place where the contract for service was made, or the place of payment.

One personal exemption is allowed a nonresident alien individual who is ***not*** a resident of Canada or Mexico, and is not a national of the United States, when figuring the amount of compensation for labor or personal services performed in the United States to which the 30% rate applies. For this purpose, prorate the exemption on a daily basis. For 1990 the exemption amount is $5.62 a day for the period labor or personal services are performed in the United States. If an alien individual is a resident of Canada or Mexico, or a national of the United States, the alien is allowed the same personal exemptions as a U.S. citizen or resident and is entitled to a proration of $5.62 per day for each allowable exemption.

Example 1. Hans Schmidt, who is a resident of the Federal Republic of Germany, worked (not as an employee) for a U.S. company in the United States for 100 days during 1990 before returning to his country. He earned $6,000 for the services performed (not considered wages) in the United States. Hans is married and has three dependent children. His wife did not work and had no income subject to U.S. tax. Hans is allowed $562 as a deduction against the payments for his personal services performed in the United States (100 days $\times$ $5.62). Tax is withheld at 30% on the rest of his earnings ($6,000 − $562). Thus, a tax of $1,631.40 was withheld from Hans' earnings (30% of $5,438).

Example 2. If, in Example 1, Hans were a resident of Canada or Mexico or a national of the United States, working under contract with a domestic corporation, $2,810 (100 days $\times$ $5.62 per day for each of five exemptions) would be allowed against the payments for personal services performed in the United States. Tax would be withheld at 30% on $3,190 ($6,000 − $2,810), the rest of his earnings. Thus, a tax of $957 would have been withheld from Hans' earnings (30% of $3,190).

Salaries and wages. The 30% withholding rule does ***not*** apply to salaries, wages, or any other compensation (referred to collectively as wages) for personal services of a nonresident alien if the wages are effectively connected with the conduct

of a trade or business in the United States and are subject to the graduated withholding rates applicable to U.S. citizens and residents. Thus, any wages paid to a nonresident alien individual for personal services performed as an ***employee for an employer*** are generally exempt from the 30% withholding. In addition, if compensation paid to a nonresident alien individual for personal services performed as an employee for an employer is effectively connected with the conduct of a trade or business in the United States, and would be treated as wages subject to graduated withholding except that it is specifically excepted from wages, it is also exempt from the 30% withholding.

See *Form W-4*, below, for special guidelines on the completion of Form W-4 by nonresident aliens subject to graduated withholding.

Withholding exemptions. The withholding exemptions allowed to a nonresident alien employee whose wages are subject to graduated withholding are equal to the number of ***personal exemptions*** to which the employee is entitled under the usual rules for nonresident aliens. Thus, a nonresident alien is allowed only one withholding exemption unless, during the entire tax year, that individual is a resident of Canada or Mexico.

Employer-employee relationship. For compensation for personal services to qualify as wages, there must be an employer-employee relationship.

Under the common law rules, every individual who performs services subject to the will and control of an employer, ***both*** as to what shall be done and how it shall be done, is an employee. It does not matter that the employer allows the employee considerable discretion and freedom of action, as long as the employer has the ***legal right*** to control both the method and the result of the services.

If the relationship of employer and employee exists, it does not matter what the parties call the relationship. Thus, it does not matter if the employee is called a partner, coadventurer, agent, or independent contractor. It does not matter how the pay is measured, how the individual is paid, or what the payments are called. Nor does it matter whether the individual works full or part time.

The existence of the employer-employee relationship under the usual common law rules will be determined, in doubtful cases, by an examination of the facts of each case.

An employee generally includes any individual who performs services if the relationship between the individual and the person for whom the services are performed is the legal relationship of employer and employee. This includes an individual who receives a supplemental unemployment compensation benefit that is treated as wages.

The term "employee" includes elected or appointed public officials and employees.

No distinction is made between classes of employees. Superintendents, managers, and other supervisory personnel are employees. Generally, an officer of a corporation is an employee, but a director acting in this capacity is not. An officer who does not perform any services, or only minor services, and neither receives nor is entitled to receive any compensation is not considered an employee.

An employer is any person or organization for whom an individual performs or has performed any service, of whatever nature, as an employee.

The term "employer" includes not only individuals and organizations in trade or business, but organizations exempt from income tax, such as religious and charitable organizations, educational institutions, clubs, social organizations, and societies. It also includes the governments of the United States, the states, Puerto Rico, and the District of Columbia, as well as their agencies, instrumentalities, and political subdivisions.

Two special definitions of employer that may have considerable application to nonresident aliens are:

1) An employer includes any person paying wages for a nonresident alien individual, foreign partnership, or foreign corporation not engaged in trade or business in the United States (including Puerto Rico as if a part of the United States), and
2) An employer includes any person who has control of the payment of wages for services that are performed for another person who does not have that control.

For example, if a trust pays wages, such as certain types of pensions, supplemental unemployment compensation, or retired pay, and the person for whom the services were performed has no legal control over the payment of the wages, the trust is the employer.

These special definitions have no effect at all upon the relationship between an alien employee and the actual employer when determining whether the compensation received is considered to be wages.

If an employer-employee relationship exists, the employer ordinarily must withhold the income tax from wage payments by using the percentage method or wage-bracket tables as shown in Publication 15, Circular E, *Employer's Tax Guide.*

Form W-4. For nonresident aliens, the following instructions supercede the instructions on the Form W-4. A nonresident alien subject to wage withholding should give the employer a completed Form W-4, *Employee's Withholding Allowance Certificate.*

Because of the restrictions on a nonresident alien's filing status, the limited number of personal exemptions a nonresident alien is allowed, and the fact that a nonresident alien cannot claim the standard deduction, the alien should fill out Form W-4 following these guidelines:

1) Check only "Single" marital status on line 3 (regardless of actual marital status).
2) Claim only one withholding allowance, unless a resident of Canada, Mexico, Japan, or South Korea, or a U.S. national (on line 4).
3) Do ***not*** claim "Exempt" withholding status on line 6.

In addition to these guidelines, nonresident aliens must request that additional tax of $3.00 per week be withheld (on line 5 of Form W-4). If the pay period is for two weeks, the additional amount to be withheld will be $6.00.

The employer must report the amount of wages paid and pay the withheld income and/or social security taxes by filing a quarterly return on Form 941.

See *Reduced withholding*, later under *Scholarship or fellowship grants (Income Code 15)*, for information on completing Form W-4 if the nonresident alien is the recipient of a U.S. source scholarship or fellowship grant.

Compensation that is not wages. Employment for which the compensation is not considered wages (for graduated income tax withholding), includes, but is not limited to, the following:

1) Agricultural labor,
2) Services of a household nature performed in or about the private home of an employer, or in or about the clubrooms or house of a local college club, fraternity, or sorority. A local college club, fraternity, or sorority does not include an alumni club or chapter and may not be operated primarily as a business enterprise. Examples of these services include those performed as a cook, janitor, housekeeper, governess, gardener, handyman, chauffeur of auto for family use, or housemother,
3) Certain services performed ***outside*** the course of the employer's trade or business for which cash payment is less than $50 for the calendar quarter,
4) Services performed as an employee of a foreign government, without regard to citizenship, residence, or where services are performed. These include services performed by ambassadors, other diplomatic and consular officers and employees, and nondiplomatic representatives. They do not include services for a U.S. or Puerto Rican corporation owned by a foreign government,
5) Services performed within or outside the United States by an employee or officer (regardless of citizenship or residence) of an international organization designated under the International Organizations Immunities Act,
6) Services performed by a duly ordained, commissioned, or licensed minister of a church, but only if performed in the exercise of the ministry and not as an employee of the United States, a U.S. possession, or a foreign government, or any of their political subdivisions. These also include services performed by a member of a religious order in carrying out duties required by that order,
7) Tips paid to an employee if they are paid in any medium other than cash or, if in cash, they amount to less than $20 in any calendar month in the course of employment.

Services performed outside the United States. Compensation paid to a nonresident alien (other than a resident of Puerto Rico, discussed later) for services performed outside the United States is not considered wages and is not subject to graduated withholding or 30% withholding.

Scholarship or fellowship grants (Income Code 15). A nonresident alien who is temporarily present in the United States may receive a scholarship or fellowship grant that may or may not be subject to tax. First, determine the source of the grant. If the grant is not from U.S. sources, no withholding is required.

The source of a scholarship or fellowship grant is the residence of the payer regardless of who disburses the funds.

For example, scholarship or fellowship payments for research or study made by the United States, a noncorporate U.S. resident, or a domestic corporation, are from U.S. sources. Similar payments from a foreign government or foreign corporation are foreign source payments even though the funds may be disbursed through a U.S agent. Payments made by an entity designated as a public international organization under the International Organizations Immunities Act are from foreign sources.

Grants made after August 16, 1986. No withholding is needed on a ***qualified scholarship*** from U.S. sources granted and paid to a ***candidate for a degree*** after August 16, 1986. A qualified scholarship means any amount paid to an individual as a scholarship or fellowship grant to the extent that, in accordance with the conditions of the grant, such amount is to be used for the following tuition and related expenses:

1) Tuition and fees required for the enrollment or attendance at an educational organization, and
2) Fees, books, supplies, and equipment required for courses of instruction at such an educational organization.

You must withhold tax at the rate of 14% on amounts received from U.S. sources by an alien present in the United States on an "F," "J," or "M" visa that are related to the scholarship but are not for tuition and related expenses. Thus, you should withhold at the 14% rate on such

additional amounts as room, board, or incidental expenses received under the scholarship.

Before applying the 14% withholding rate to the amount of the grant that is subject to withholding, you should allow the alien the benefit of a deduction for one personal exemption, prorated on a daily basis of $5.62 during the period in 1990 for which the payments are received. If the nonresident alien is a resident of Canada or Mexico, or a national of the United States, the individual is entitled to the same personal exemptions as a U.S. citizen. The exemptions are prorated on a basis of $5.62 per day for each allowable exemption in 1990.

The graduated withholding just discussed under *Salaries and wages*, is required on amounts paid for teaching, research, or other services required as a condition of receiving the qualified scholarship.

If the person receiving the scholarship or fellowship grant is ***not a candidate for a degree***, and is present in the United States on an "F," "J," or "M" visa, you must withhold tax at the rate of 14% on the total amount of the grant to the extent that it is from U.S. sources if the following requirements are met:

The grant must be for study, training, or research at an educational organization that is in the United States.

The grant must be made by:

a) A tax-exempt organization operated for charitable, religious, educational, etc. purposes,

b) A foreign government,

c) A Federal, State, or local government agency, or

d) An international organization, or a binational or multinational educational or cultural organization created or continued by the Mutual Educational and Cultural Exchange Act of 1961 (known as the Fulbright–Hays Act).

Grants made before August 17, 1986. No withholding is needed on a U.S. source qualifying scholarship or fellowship grant received by a ***candidate for a degree.*** However, you must withhold on any payments for teaching, research, or other part-time employment required as a condition of receiving the grant, unless those services are required of all candidates for a particular degree (whether or not they are recipients of scholarships or fellowship grants).

If the person receiving the qualifying U.S. scholarship or fellowship grant is ***not a candidate for a degree*** and is present in the United States on an "F" or "J" visa, you must withhold tax at the rate of 14% on the amount of the grant that is more than $300 a month. In addition, after grants have been received for a total of 36 months (consecutive or not), the $300-a-month exclusion does not apply and you must withhold tax at the 14% rate on the entire grant.

Before applying the 14% withholding rate to the amount of the grant that is subject to withholding, you should allow the alien the benefit of a deduction for one personal exemption, prorated on a daily basis of $5.62 during the period in 1990 for which the payments are received. If the nonresident alien is a resident of Canada or Mexico, or a national of the United States, the individual is entitled to the same personal exemptions as a U.S. citizen. The exemptions are prorated on a basis of $5.62 per day for each allowable exemption in 1990.

Amounts related to a U.S. scholarship or fellowship grant (granted before 8/17/86), received by an alien present in the United States on an "F" or "J" visa, for travel, research, clerical help, or equipment may be subject to withholding if:

1) They relate to the part of the scholarship or fellowship grant that is subject to tax, or

2) They were not specifically designated to cover these expenses.

These amounts would be subject to 14% withholding after allowing the prorated deduction for exemptions according to the foregoing rules.

However, if the additional amounts are designated specifically to cover expenses for travel, research, clerical help, or equipment pertaining to the scholarship or fellowship, and are so spent, no withholding is required until the 36-month period (as previously explained) has expired. After the 36-month period, these additional amounts are included with the scholarship or fellowship grant, and the amount of tax to be withheld is figured according to the foregoing rules.

Reduced withholding. Nonresident alien students or grantees who are recipients of U.S. source grants or scholarships may be entitled to reduced withholding on the taxable part of the grant or scholarship. The students or grantees must have an "F," "J," or "M" visa.

To receive the benefit of reduced withholding, the student or grantee must complete a Form W–4, *Employee's Withholding Allowance Certificate*, annually following the instructions given here and forward it to you, the payer of the scholarship, or your designated withholding agent. You may rely on the information on Form W–4 unless you know or have reason to know it is incorrect. The withholding agent will be liable for the tax to be withheld, and must file Form 1042 and a Form 1042S (discussed later) for each student or grantee who files a Form W–4 with the agent.

Each individual student or grantee who files a Form W–4 is required to file an annual U.S. income tax return to be allowed the exemptions and deductions claimed on that form. If the individual is in the United States during more than one tax year, he or she must attach a statement to the annual Form W–4 indicating that the individual has filed a U.S. income tax return for the previous year. If he or she has not been in the United States long enough to be required to file a return, the individual must attach a statement to the W–4 saying that a timely U.S. tax return will be filed.

In completing the Form W–4, the nonresident alien student or grantee may not take the standard deduction into account, therefore, a zero (-0-) should be shown on line B of the *Personal Allowances Worksheet* that comes with Form W-4.

A prorated portion of allowable personal exemptions based on the projected number of days he or she will be in this country is allowed. This is done by multiplying the daily exemption amount ($5.62 for 1990) by the number of days the student or grantee expects to be in the United States during the year. The prorated exemption amount should be shown on line A of the worksheet. Unless the alien is a resident of Canada, or Mexico, a U.S. national, or a resident of Japan or South Korea, a zero (-0-) should be shown on lines C and D of the worksheet. If the student or grantee is a resident of Canada, Mexico, Japan, or South Korea, or is a U.S. national, an additional daily exemption amount may be allowed for each of their dependents.

As lines E and F of the worksheet do not apply to nonresident aliens subject to this procedure, there should be no entries on those lines.

The nonresident alien student or grantee may be entitled to a deduction for away from home expenses (meals, lodging, and transportation) on Form W–4 if he or she expects to be away from his or her tax home for less than 2 years and can answer yes to the three questions listed under *Travel Expenses* in Publication 519. Any student or grantee who claims these expenses for purposes of reduced withholding must submit a statement, signed under penalties of perjury, indicating that the three tests mentioned above are met. The amount of the claimed expenses should be the anticipated actual amount, if known. If the amount of the expenses is not known at the time the W–4 is filed with you, the current per diem allowances in effect for participants in the Career Education Program under the Federal Travel Regulations may be used to determine the allowable expense amount for purposes of completing the Form W–4. The current amount allowable is $18.00 per day.

The actual expenses or the per diem allowance should be shown on line A of the worksheet in addition to the personal exemption amount.

The student or grantee may also deduct on Form W–4, the part of the grant or scholarship that is tax exempt under the statute or a tax treaty, and any other deductions that will be allowed when a return is filed. These amounts should also be added to Line A of the worksheet.

Lines A through F of the *Personal Allowances Worksheet* are added and the total should be shown on Line G.

The payer of the grant or scholarship must review the Form W–4 to make sure all the necessary and required information is provided. If the withholding agent knows or has reason to know that the amounts shown on the Form W–4 are false, the withholding agent must reject the W–4 and withhold at the appropriate rate. However, if the only incorrect information is that the student or grantee's stay in the United States has extended beyond 24 months, the withholding agent may withhold under these rules, but without a deduction for away from home expenses.

After receipt and acceptance of the Form W–4, the payer must withhold as if the grant or scholarship income were wages. The gross amount of the income is reduced by the total amount of exemptions and deductions on the Form W–4 and the withholding tax is figured on the remainder.

When completing Form 1042S for the student or grantee, the gross scholarship or fellowship grant should be entered in column (b), the withholding allowance amount from line G of the *Personal Allowances Worksheet* of Form W–4 should be entered in column (c), and the net of these two amounts should be shown in column (d). The tax rate is shown in column (e) and the Federal tax withheld in column (g). State income tax withheld, if any, is entered on line 12 of Form 1042S.

Compensation for services rendered as an employee by an alien who also is the recipient of a scholarship or fellowship grant usually is subject to graduated withholding according to the rules previously discussed in *Salaries and wages*. This includes taxable amounts an individual who is a candidate for a degree receives for teaching, doing research, and carrying out other part-time employment required as a condition for receiving the scholarship or fellowship grant. An exception to this requirement for alien students, teachers, and researchers can be found under *Treaty Benefits*, discussed earlier.

Amounts of per diem for subsistence paid by the U.S. Government (directly or by contract) to a nonresident alien engaged in a training program in the United States under the Mutual Security Act of 1954 are not subject to 14% or 30% withholding. This is true even though the alien may be subject to income tax on those amounts.

Compensation for independent personal services (Income Code 16). Independent personal services (a term commonly used in tax treaties) are personal services performed by an independent nonresident alien contractor as contrasted with those performed by an employee. This category of compensation includes payments for professional services, such as fees of an attorney, physician, or accountant made directly to the person performing the services.

Compensation for independent personal services is subject to withholding and reporting as follows.

Statutory. Withholding at the statutory rate of 30% is required on all payments. Before applying the 30% rate, you should take the prorated value of one personal exemption (or for residents of Canada or Mexico or U.S. nationals, the same

number of exemptions as a U.S. citizen) against such payments. The nonresident alien may be entitled to a refund of the withheld tax, upon filing a U.S. tax return, as described later under Income Code 17.

Compensation to which the statutory rate would apply may be eligible for special treatment as discussed next.

Withholding agreements. Compensation for personal services of a nonresident alien who is engaged during the tax year in the conduct of a trade or business in the United States may be wholly or partially exempted from withholding at the statutory rate if an agreement has been reached between the Assistant Commissioner (International) and the alien individual as to the amount of withholding required. This agreement will be effective for payments covered by the agreement that are made after the agreement is executed by all parties. The alien individual must agree to timely file an income tax return for the current tax year.

Central withholding agreements. Nonresident alien entertainers or athletes performing or participating in athletic events in the United States may be able to enter into a withholding agreement with the Internal Revenue Service for reduced withholding provided certain requirements are met. Under no circumstances will such a withholding agreement reduce taxes withheld to less than the anticipated amount of income tax liability.

Nonresident alien entertainers or athletes requesting a central withholding agreement are required to submit the following:

1) A list of the names and addresses of the nonresident aliens to be covered by the agreement.
2) Copies of all contracts that the aliens or their agents and representatives have entered into regarding the time period and performances or events to be covered by the agreement including, but not limited to, contracts with:
   a) employers, agents, and promoters,
   b) exhibition halls,
   c) persons providing lodging, transportation, and advertising, and
   d) accompanying personnel, such as band members or trainers.
3) An itinerary of dates and locations of all events or performances scheduled during the period to be covered by the agreement.
4) A proposed budget containing itemized estimates of all gross income and expenses for the period covered by the agreement, including any documents to support these estimates.
5) The name, address, and telephone number of the person the IRS should contact if additional information or documentation is needed.
6) The name, address, and employer identification number of the agent or agents who will be the central withholding agents for the aliens and who will enter into a contract with the IRS. A central withholding agent ordinarily receives contract payments, keeps books of account for the aliens covered by the agreement, and pays expenses (including tax liabilities) for the aliens during the period covered by the agreement.

When the IRS approves the estimated budget and the designated central withholding agents, the Associate Chief Counsel (International) will prepare a withholding agreement. The agreement must be signed by each withholding agent, each nonresident alien covered by the agreement, and the Assistant Commissioner (International).

Generally, each withholding agent must agree to withhold income tax from payments made to the nonresident alien; to pay over the withheld tax to the IRS on the dates and in the amounts specified in the agreement; and to have the IRS apply the payments of withheld tax to the withholding agent's Form 1042 account. Each withholding agent will be required to file Form 1042 and Form 1042S for each tax year in which income is paid to a nonresident alien covered by the withholding agreement. The IRS will credit the withheld tax payments, posted to the withholding agent's Form 1042 account, in accordance with the Form 1042S. Each nonresident alien covered by the withholding agreement must agree to file Form 1040NR.

A request for a central withholding agreement should be sent to the following address at least 90 days before the agreement is to take effect:

Chief, Special Procedures Section
IN:C:C:51
Room 3311
950 L'Enfant Plaza South, S.W.
Washington, DC 20024

Final payment exemption. The final payment of compensation for independent personal services may be wholly or partially exempted from withholding at the statutory rate. The nonresident alien must have been engaged during the tax year in the conduct of a trade or business in the United States. This exemption is available only once during an alien individual's tax year. It applies to the last payment of compensation, other than wages, for personal services rendered in the United States that the individual expects to receive from any withholding agent during the tax year.

To obtain the final payment exemption, the nonresident alien, or the alien's agent, must file the forms and provide the information required by the Assistant Commissioner (International). This information includes, but is not limited to, the following items:

1) A statement by each withholding agent from whom amounts of gross income effectively connected with the conduct of a trade or business in the United States have been received by the alien individual during the tax year. It must show the amount of such income paid and the amount of tax withheld. Each statement must be signed by the withholding agent and verified by a declaration that it is made under penalties of perjury.
2) A statement by the withholding agent from whom the final payment of compensation for personal services will be received showing the amount of such final payment and the amount that would be withheld if a final payment exemption is not granted. The statement must be signed by the withholding agent and verified by a declaration that it is made under penalties of perjury.
3) A statement by the individual that he or she does not intend to receive any other amounts of gross income effectively connected with the conduct of a trade or business in the United States during the current tax year.
4) The amount of tax that has been withheld (or paid) under any other provision of the Code or regulations for any income effectively connected with the conduct of a trade or business in the United States during the current tax year.
5) The amount of any outstanding tax liabilities, including any interest and penalties, from the current tax year or prior tax periods.
6) The provision of any income tax treaty under which a partial or complete exemption from withholding may be claimed, the country of the individual's residence, and a statement of sufficient facts to justify an exemption under such treaty.

The alien individual must submit a statement, signed and verified by a declaration that it is made under the penalties of perjury, that all the information provided is true, and that to his or her knowledge no relevant information has been omitted.

If satisfied with the information provided, the Assistant Commissioner (International) will determine the amount of the alien individual's tentative income tax for the tax year with respect to gross income effectively connected with the conduct of a trade or business in the United States. Ordinary and necessary business expenses may be taken into account if proved to the satisfaction of the Assistant Commissioner (International).

The Assistant Commissioner (International) will provide the individual with a letter to you, the withholding agent, stating the amount of the final payment of compensation for personal services that is exempt from withholding, and the amount that would otherwise be withheld that may be paid to the individual due to the exemption. The amount of compensation exempt from withholding cannot be more than $5,000. The alien individual must give two copies of the letter to you and must also attach a copy of the letter to his or her income tax return for the tax year for which the exemption is effective.

Tax treaties. Under most tax treaties, compensation for independent personal services performed in the United States is exempt from U.S. income tax only when the services are performed during a period of temporary presence in the United States (usually not more than 183 days) and the independent contractor is a resident of the treaty country. Thus, the compensation is not exempt from U.S. tax if the contractor is a U.S. resident.

Often, withholding under the statutory rules applies when a payment is made to a treaty country resident contractor for services performed by the contractor as a nonresident alien in the United States. See *Special events and promotions*, earlier, under *Treaty Benefits*. The treaty country resident contractor must then file a U.S. tax return to recover any overwithheld tax and to provide the Internal Revenue Service with proof that the contractor is entitled to the benefits of a treaty exemption.

Compensation for dependent personal services (Income Code 17). Dependent personal services are personal services performed in the United States by a nonresident alien individual as an employee (as contrasted with an independent contractor).

Compensation for dependent personal services is subject to withholding and reporting as follows.

Statutory. Ordinarily, graduated withholding is required on compensation (wages) for dependent personal services. Form W–4, *Employee's Withholding Allowance Certificate*, is required from the nonresident alien, and reporting of wages and income tax withheld is required on Form W–2. (See *Form W-4*, earlier under *Salaries and wages*, for special guidelines nonresident aliens must follow when completing Form W-4.) The nonresident alien, however, may not be subject to tax or withholding of tax under the following circumstances:

First, compensation paid for labor or personal services performed in the United States is ***deemed not to be income from sources within the United States*** and, thus, is not subject to U.S. income tax if:

1) The labor or services are performed by a nonresident alien temporarily present in the United States for a period or periods not exceeding a total of 90 days during the tax year,
2) The total compensation does not exceed $3,000, and
3) The compensation is for labor or services performed as an employee of, or under a contract with—
   a) A nonresident alien individual, foreign partnership, or foreign corporation that is not

engaged in a trade or business in the United States, or

b) A U.S. citizen or resident individual, a domestic partnership, or a domestic corporation, if the labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by this individual, partnership, or corporation.

If the total compensation is more than $3,000, the entire amount is income from sources in the United States and is subject to U.S. tax.

Second, compensation paid by a ***foreign employer*** to a nonresident alien for the period the alien is temporarily present in the United States on an "F," "J," or "M" visa is exempt from U.S. income tax. For this purpose, a foreign employer means:

1) A nonresident alien individual, foreign partnership, or foreign corporation, or
2) An office or place of business maintained in a foreign country or in a U.S. possession by a domestic corporation, a domestic partnership, or an individual U.S. citizen or resident.

For example, a French citizen who works for the Paris branch of a banking company incorporated in New York was admitted to the United States for a temporary period on a "J" visa to study monetary theory. The alien continued to receive a salary from the foreign branch while studying in the United States. The salary would not be subject to regular wage withholding if the alien filed a proper statement claiming the exemption.

The statement must be provided in duplicate, must contain the alien's name, address, and taxpayer identifying number, and it must certify that:

1) The alien is not a citizen or resident of the United States, and
2) The income to be paid to the alien is exempt from U.S. income tax, and why the income is exempt.

The statement must be dated, must identify the tax year and the income to which it applies, and must be signed by the alien including a written declaration that it is made under the penalties of perjury. The duplicate copy of the statement should be attached to the Form 1042S filed for the alien.

Third, compensation paid to a nonresident alien individual who is a resident of Canada or Mexico and who, in carrying out duties in a ***transportation service*** between points in the United States and those countries, enters and leaves the United States frequently, is not wages for income tax withholding purposes. Therefore, the compensation is not subject to graduated withholding, and also is specifically exempt from 30% withholding. This applies to people engaged in railroad, bus, truck, ferry, steamboat, aircraft, or other transportation services and applies whether the employer is a domestic or foreign entity.

Compensation paid to a nonresident alien who is a resident of Canada or Mexico and who enters and leaves the United States frequently in carrying out duties in connection with an ***international project,*** such as the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge crossed by or crossing the boundary between the United States and either Canada or Mexico, similarly is not subject to graduated withholding nor to 30% withholding.

For either of these exceptions to apply for any tax year, the alien employee must give you, as the employer, a statement in duplicate for the tax year setting forth the employee's name, address, and taxpayer identifying number. The statement must certify that the individual is not a citizen or resident of the United States and is a resident of Canada or Mexico who expects to meet these requirements during the tax year for which the statement is filed. Although no particular form must be used, this statement must show:

1) The date,
2) The tax year covered, and
3) The employee's signature.

The statement must contain, or be verified by, a written declaration that it is made under the penalties of perjury. Attach the duplicate copy of each statement to Form 1042.

Canadian and Mexican residents employed entirely within the United States. Neither the transportation service exception nor the international projects exception applies to the compensation of a resident of Canada or Mexico who is employed entirely within the United States and who commutes from a home in Canada or Mexico to work in the United States. Thus, if such an individual works at a fixed point or points in the United States (such as a factory, store, office, or designated area or areas), the wages for services performed as an employee for an employer are subject to graduated withholding.

Fourth, compensation paid for services ***performed in Puerto Rico*** by a nonresident alien for an employer (other than the United States or one of its agencies) is not wages for income tax withholding purposes and, thus, is not subject to withholding.

Compensation paid for either:

1) Services performed outside the United States but ***not*** in Puerto Rico by a nonresident alien who is a resident of Puerto Rico for an employer other than the United States or one of its agencies, or
2) Services performed outside the United States by a nonresident alien who is a resident of Puerto Rico, as an employee of the United States or any of its agencies

is not wages for income tax withholding purposes and thus is not subject to wage withholding if the alien does not expect to be a resident of Puerto Rico during the entire tax year.

To qualify for any tax year, the employee must give you, as the employer, a statement showing the employee's name and address and certifying that the employee is not a citizen or resident of the United States, and is a resident of Puerto Rico who does not expect to be a resident for the entire tax year. Although no particular form must be used, this statement must show:

1) The date,
2) The tax year covered, and
3) The employee's signature.

This statement must contain, or be verified by, a written declaration that it is made under the penalties of perjury.

Tax treaties. Compensation for dependent personal services under some tax treaties is exempt from U.S. income tax only if both the employer and the employee are treaty country residents and the nonresident alien employee performs the services while temporarily living in the United States (usually for not more than 183 days). Other treaties provide for exemption from U.S. tax on compensation for dependent personal services if the employer is any foreign resident and the employee is a treaty country resident, and the nonresident alien employee performs the services while temporarily in the United States.

Compensation for teaching (Income Code 18). This category is given a separate income code number because most tax treaties provide at least partial exemption from withholding and from U.S. tax. Compensation for teaching means payments to a nonresident alien professor, teacher, or researcher by a U.S. university or other accredited educational institution for teaching or research work at the institution.

Statutory. Graduated withholding of income tax usually applies to all wages, salaries, and other compensation for teaching and research paid by a U.S. educational institution during the period the nonresident alien is teaching or performing research at the institution. If a nonimmigrant alien is temporarily present in the United States on an "F," "J," or "M" visa, no FICA (social security) or FUTA (unemployment) tax should be withheld or paid if the alien is performing services to carry out a purpose for which the alien was admitted to the United States.

Tax treaties. Under most tax treaties, compensation for teaching is exempt from U.S. tax and, therefore, from withholding for a specific period of time when paid to a professor, teacher, or researcher who is a resident of the treaty country and not a citizen of the United States (see *Table 2*). The U.S. educational institution paying the compensation must report the amount of compensation paid each year on Form 1042S. See *Claiming exemption from withholding,* discussed earlier under *Treaty Benefits.*

Compensation during training (Income Code 19). This category refers to compensation (as contrasted with remittances, allowances, or other forms of scholarships or fellowship grants—see Income Code 15) for personal services performed while a nonresident alien is temporarily in the United States as a student, trainee, or apprentice or while acquiring technical, professional, or business experience.

Statutory. Wages, salaries, or other compensation paid to a nonresident alien student, trainee, or apprentice for labor or personal services performed in the United States are subject to graduated withholding. If a nonimmigrant alien student or trainee is present temporarily in the United States on an "F," "J," or "M" visa and is performing services to carry out a purpose for which admitted to the United States, no FICA or FUTA tax should be paid or withheld.

Tax treaties. Many tax treaties provide an exemption from U.S. tax and, therefore, from graduated withholding, on compensation paid to nonresident alien students or trainees during training for a limited period, up to a maximum dollar amount per year. See *Claiming exemption from withholding,* discussed earlier under *Treaty Benefits.* In addition, some treaties provide an exemption from tax and withholding for compensation paid by the U.S. Government or its contractor to a nonresident alien student or trainee who is temporarily present in the United States as a participant in a program sponsored by the U.S. Government (see *Table 2*). However, reporting the amount of compensation is required on Form 1042S by a U.S. resident, an agency of the U.S. Government, or its contractor.

Earnings as an artist or athlete (Income Code 20). Because many tax treaties contain a provision for compensation to artists and athletes, a separate category is assigned these payments for withholding purposes. This category includes payments made for performances by public entertainers, such as artists, actors, musicians, or athletes.

Statutory. Generally, in the absence of an applicable treaty provision, you must withhold at the statutory rate of 30%. See the previous discussion of *Statutory* requirements under *Compensation for independent personal services* for information on independent contractors, and the discussion under *Compensation for dependent personal services,* for information on employees.

Tax treaties. Under many tax treaties, compensation paid public entertainers for services performed in the United States is exempt from U.S. income tax only when the services are performed during a limited period of temporary presence in the United States and the compensation within limits provided in the applicable tax treaty.

Often, however, withholding under the statutory rules will apply when a payment is made to a treaty country resident contractor for services performed in the United States as a nonresident alien public entertainer. This is because the partial or complete exemption provided by certain treaties is based upon factors that cannot be determined until the end of the year. See *Special events and promotions*, earlier under *Treaty Benefits*.

The treaty country resident contractor may file a U.S. tax return to recover any overwithheld tax and to provide the Internal Revenue Service with proof that the contractor is entitled to the benefits of a treaty exemption.

Other Income

For the discussion of Income Codes 24, 25, and 26, see *U.S. Real Property Interest*, later.

Gambling winnings (Income Code 28). Use this income code to report gambling winnings and any tax withheld on those winnings.

Other income (Income Code 50). As indicated previously, every kind of fixed or determinable annual or periodic income from sources in the United States is subject to withholding, unless specifically exempt under the Internal Revenue Code or a tax treaty. The following discussions illustrate other income subject to withholding, but not included in any of the other income categories. You generally must withhold tax at the 30% statutory rate on these kinds of income. For this reason they are not shown in *Table 1* (except by footnote in certain cases) as being subject to a reduced rate or exemption under any existing tax treaty.

Insurance proceeds. Income derived by an insured nonresident alien from sources in the United States upon the surrender of, or at the maturity of, a life insurance policy, is subject to withholding. The proceeds are income to the extent they exceed the cost of the policy.

Miscellaneous payments. If a payment of income (other than previously shown) is from sources in the United States, is fixed or determinable annual or periodic income, and is ***not*** effectively connected with a trade or business in the United States, the income is subject to withholding on the gross amount of the payment. (See previous discussions for definitions of terms—fixed or determinable income and effectively connected with a trade or business in the United States.) The fact that a payment is not made annually or periodically does not necessarily prevent its being fixed or determinable annual or periodic income.

For example, a person working for a commission that is paid or credited monthly receives fixed or determinable annual or periodic income. A commission paid for a single transaction is also fixed or determinable annual or periodic income.

The share of the fixed or determinable annual or periodic distributable net income of an estate or trust from sources in the United States, that is required to be distributed currently or has been paid or credited during the tax year to a nonresident alien beneficiary, is fixed or determinable annual or periodic income and is subject to withholding.

Items such as taxes, interest on mortgages, or premiums on insurance paid to or for the account of a nonresident alien landlord by a tenant, under terms of a lease, are fixed or determinable annual or periodic income and are subject to withholding.

Other examples of income subject to withholding are prizes to nonresident alien artists for pictures exhibited in the United States, purses received by nonresident alien boxers for prize fights in the United States, and prizes received by nonresident alien professional golfers in golfing tournaments in the United States.

If you operate a racetrack, you must withhold 30% on any purse paid to a nonresident alien racehorse owner in the absence of definite information filed on Form 1001 that such owner has not raced, or does not intend to enter, a horse in another race in the United States during the tax year. If available information indicates that the racehorse owner has raced a horse in another race in the United States during the tax year, then any Forms 1001 filed for that year are ineffective. The owner may be exempt from withholding of tax at 30% on the purses, if the owner files a statement on Form 4224 with you, which provides that the income is effectively connected with the conduct of a trade or business in the United States and that such income is includible in the taxpayer's gross income.

Withholding Tax Rates

You must deduct and withhold tax at the following statutory rates specified in the Internal Revenue Code on payments of income, unless a reduced rate or exemption is authorized under a tax treaty:

1) 14% on the taxable part of a U.S. scholarship or fellowship grant,
2) 2% on tax-free covenant bond interest on bonds issued before January 1, 1934, whose maturity date was not extended on or after that date, unless paragraph (3) applies to such interest,
3) 30% on tax-free covenant bond interest on bonds issued before January 1, 1934, whose maturity date was not extended on or after that date if the interest is paid to a nonresident alien individual, nonresident partnership made up entirely or partly of nonresident aliens, a nonresident foreign corporation, or an owner who is unknown to the withholding agent, and the tax liability assumed by the obligor is not more than 2% of the interest,
4) 27½% on tax-free covenant bond interest on bonds issued before January 1, 1934, whose maturity date was extended on or after that date and the tax liability assumed by the obligor is more than 27½% of the interest,
5) 4% on gross investment income from interest, dividends, rents, and royalties paid to a foreign private foundation,
6) Graduated rates as specified in Circular E on wages paid to a nonresident alien employee,
7) 10% (or other amount) on dispositions of U.S. real property interests (see the discussion under *U.S. Real Property Interest*, later),
8) 28% or 34% on each foreign partner's effectively connected taxable income of the partnership (see the discussion under *Partnership Withholding on Effectively Connected Income*, later), and
9) 30% on all other income payments described previously under *Income Subject to Withholding*.

Increased tax rates may be applied by the President to residents or corporations of foreign countries that apply burdensome or discriminatory taxes on U.S. persons.

Deposits of Withheld Taxes

You must deposit the income tax withheld on fixed or determinable annual or periodic income with an authorized financial institution or a Federal Reserve Bank using Form 8109, *Federal Tax Deposit Coupon*, according to the instructions provided with the form. If you don't have your coupons when a deposit is due, contact your Internal Revenue Service district office.

These instructions do not apply to deposits of tax withheld on distributions of effectively connected income to foreign partners or to deposits of tax withheld on dispositions of U.S. real property interests by foreign persons. See the separate discussions, later, on when to withhold tax and how to deposit the withheld tax on those transactions.

A deposit required for any period occurring in one calendar year must be made separately from:

1) A deposit for any period occurring in another calendar year, or
2) A deposit required for any other type of tax, for example, withheld tax on wages and FICA taxes, excise taxes, etc.

How much tax you withheld determines the frequency of the deposits. The following rules show how often deposits must be made:

1) If at the end of a calendar year the total amount of undeposited taxes is less than $200, you may either deposit the entire amount or remit it with Form 1042 by the filing due date of your annual Form 1042.
2) If at the end of any month the total amount of undeposited taxes is $200 or more but less than $2,000, you must deposit the taxes within 15 days after the end of the month. If you made a deposit of $2,000 or more during the month (except December) under rule 3 below, carry over any end of the month balance of less than $2,000 to the next month. If you made a deposit of $2,000 or more during December, any end of December balance of less than $2,000 should be paid directly to IRS along with your Form 1042 by March 15 of the following year.
3) If at the end of any quarter-monthly period the total amount of undeposited taxes is $2,000 or more, you must deposit the taxes within 3 banking days after the end of the quarter-monthly period. (A quarter-monthly period ends on the 7th, 15th, 22nd, and last day of the month.) In figuring banking days, exclude any local holidays observed by authorized financial institutions, as well as Saturdays, Sundays, and legal holidays.

You are considered to meet the deposit requirements in (3) if:

1) You deposit at least 90% of the actual tax liability for the deposit period, and
2) You deposit any underpayment with the first deposit that you must make after the 15th day of the following month, if the quarter-monthly period is in a month other than December. You must deposit any underpayment of $200 or more for a quarter-monthly period that occurs during December by January 31.

These deposit rules do not apply to Canadian withholding agents, who should pay any additional U.S. tax withheld with their annual Form 1042 return.

How to deposit taxes. Fill in a preinscribed Federal Tax Deposit Coupon. Mail or deliver the completed coupon with a check or postal money order for the amount of the deposit to an authorized financial institution qualified as a depositary for federal taxes, or to the Federal Tax Department of the Federal Reserve Bank or Branch serving the geographic area from which you mail or deliver the deposit. Make the check or money order payable to the financial institution or Federal Reserve Bank where you make your deposit.

Deposits at authorized financial institutions. Authorized financial institution depositaries are required to accept cash, a postal money order drawn to the order of the depositary, or a check or draft drawn on and made payable to the depositary. You may make a deposit with a check drawn

on another financial institution only if the depositary is willing to accept that form of payment.

Deposits at Federal Reserve Banks. If you make a tax deposit at a Federal Reserve Bank, you must make the deposit at the Federal Reserve Bank that serves your geographical area. Also, the payment must be made with what the Federal Reserve Bank considers an immediate credit item. This includes, but is not limited to, cash, a postal money order, or a check drawn on a bank in the same city as the Federal Reserve Bank. You can get more information on which Federal Reserve Bank serves your area, and what it considers an immediate credit item, from your local financial institution or Federal Reserve Bank.

Deposits made by foreign corporations. Fill in a preinscribed Federal Tax Deposit Coupon showing the "Amount of Deposit" in U.S. dollars. Mail the completed coupon with a bank draft in U.S. dollars to:

Federal Reserve Bank of Philadelphia
P.O. Box 66
Philadelphia, PA, 19105, USA
Attn: Treasury Tax and Loan Unit

In order to eliminate possible late payment penalty charges, be prepared to show that the payment was mailed on or before the second day before the due date. See *Timeliness of deposits,* below.

Timeliness of deposits. The timeliness of a deposit is determined by the date stamped on the Federal Tax Deposit Coupon by the financial institution or Federal Reserve Bank. If you make a deposit by mail, and it is received after the due date, it will be considered on time if you show that you mailed it on or before the second day before the due date. However, tax deposits made at Federal Reserve Banks that are not in compliance with deposit payment requirements will nevertheless be processed by the receiving Federal Reserve Bank rather than returned to you. Such tax deposits will be dated upon collection of the funds by the Federal Reserve Bank.

Penalty for failure to make deposits on time. If you fail to make a required deposit within the time prescribed, a 10% penalty is imposed on the underpayment (the difference between the required deposit and any actual deposit for a period). You can avoid the penalty if you can show to the satisfaction of the District Director or Director of the Service Center that the failure to deposit was for reasonable cause and not because of willful neglect.

Caution: As this publication was being prepared for print, Congress was considering legislation that would change the amount of the penalty for failure to make deposits on time. The amount of the penalty will be based on the number of days that the required deposit is late. For additional information on any late legislative changes, get Publication 553, *Highlights of 1989 Tax Changes.*

Saturdays, Sundays, or holidays. If the due date for performing any act for tax purposes, such as making a deposit or filing a return, falls on a Saturday, Sunday, or legal holiday, you may perform the act on the next day that is not a Saturday, Sunday, or legal holiday.

Obtaining coupon book. A preinscribed book of Federal Tax Deposit Coupons (Form 8109) automatically will be sent to you after you apply for an identification number. Apply by completing Form SS–4, available from the IRS. If you have not received the coupon book, you should contact your IRS district office.

Record of deposit. Before making a deposit, enter the amount of payment on the coupon and in your records. The coupon will not be returned to you, but will be used to credit your tax account as identified by your employer identification number.

Refund of Overpayment of Tax

Nonresident alien employees must file a timely return, Form 1040NR, *U.S. Nonresident Alien Income Tax Return,* to obtain a refund of tax withheld by graduated withholding from wages paid for their services in the United States. That tax cannot be refunded by the employer.

Adjustment for Overwithholding

Generally, to recover a refund or credit of tax withheld at the source, which has been paid to the U.S. Government, the actual owner of the income must file a timely income tax return, Form 1040NR.

For example, when you as the withholding agent are required to withhold $300 tax from rents paid to a nonresident alien, and you mistakenly withhold $320 and mistakenly pay $350 to the Internal Revenue Service, $30 will be credited or refunded to you and $20 will be credited or refunded to the actual owner of the income.

You may recover this overpayment of $30 by adjusting the Federal Tax Deposits if the erroneous withholding occurred during the same calendar year. Or you may claim the credit of $30 on the Form 1042, which you would file after the end of the year. This would create an overpaid return that would be processed as a claim for refund or credit.

If you reimburse the recipient $20 during the same year (before filing the Form 1042), you would show a refund of $50 on the applicable line on Form 1042.

Overwithholding during a calendar year. Ninety percent of the tax withheld must be deposited within a relatively short time after the withholding occurs if the tax withheld amounts to $2,000 or more. You may use the remaining 10% for making any necessary adjustments between yourself and the recipient. However, if the 10% amount is not enough, or adjustments are needed after the entire tax (including the 10% previous balance retained) has been deposited, the Service has two procedures, one termed ***repayment*** and the other ***reimbursement.***

A repayment is a refunding of the overwithholding (after its deposit) out of your own funds, and a reimbursement is a credit of the excess tax previously withheld from a recipient of income against the tax to be withheld from income later paid to the same recipient. The main difference between the two methods of adjustment, repayment and reimbursement, is that reimbursement involves only an adjustment between income payments to the same recipient. It does not have to be shown on Form 1042. There can be no reduction of a deposit of tax made after filing Form 1042 for the year in which the overwithholding took place. However, repayment, which involves the use of your own funds, and a later reduction in a tax deposit, must be reflected on Form 1042.

You may adjust amounts overwithheld by repayment out of your own funds any time before filing the Form 1042 for the year involved. You may, therefore, make this repayment at any time up to March 15, the due date of the return (Form 1042). If you adjust by repayment, then you may adjust accounts by reducing a later deposit by an amount equal to the amount repaid to the recipient. You may make this reduction in any deposit during the year of overwithholding or during the year following the year of overwithholding.

Example. James Smith is a nonresident alien who is a resident of the United Kingdom. In December 1988, domestic corporation M paid a dividend of $100 to James, at which time M Corporation withheld $30 and paid the balance of $70 to him. On February 16, 1989, James advised M Corporation that according to the income tax convention with the United Kingdom, only $15 tax should have been withheld from the $100 dividend and requested repayment of the $15 which was erroneously withheld. Although M Corporation had already deposited the $30, which was withheld, the corporation repaid James the $15.

During 1988, M Corporation made no other payments from which tax was required to be withheld. Therefore, its return on Form 1042 for 1988, filed on March 10, 1989, shows total tax withheld of $30, reduced by an adjustment of $15 repaid to James, and an adjusted total tax withheld of $15. M Corporation claims credit for the overpayment of $15 shown on Form 1042 for 1988. It may reduce by $15 any deposit required to be made of tax withheld during 1989 or request a refund of the overpayment.

The Form 1042S required to be filed by M Corporation for the dividend of $100 paid to James in 1988 must show net tax withheld of $15. Form 1042S must accompany the Form 1042 for 1988 filed on March 10, 1989. No additional explanation is needed to be filed with Form 1042 for 1988.

During 1989, M Corporation made payments from which it withheld tax of $200, all of which occurred in June of that year. On July 11, 1989, M Corporation deposited $185, that is, $200 less the $15 credit claimed on its Form 1042 for 1988. On March 14, 1990, M Corporation filed its return on Form 1042 for 1989, which shows total tax withheld of $200, $185 previously deposited, and $15 allowable credit.

Overwithholding discovered in later year. If you discover after the close of the calendar year and after filing Form 1042 for the year that tax was overwithheld, make no adjustment to the amount of tax reported on Forms 1042S (and Form 1042) or on any deposit or payment with respect to a prior year.

If you do not discover the erroneous withholding before the date on which the Form 1042 is due, you should not file an amended Form 1042 for the prior tax year in order to recover the overpayment or deposit. The foreign recipient will have to file a U.S. income tax return (Form 1040NR or Form 1120F) or, if such a tax return has already been filed, a claim for refund (amended Form 1040NR or 1120F) to recover the amount overwithheld after the Form 1042 has been filed by you.

The procedure for handling adjustments of overwithheld tax is to make easier the reconciliation of the amount of your tax liability with the amount of tax deposited or paid for a calendar year, and to avoid the possibility that a foreign payee could obtain a refund from both you and the U.S. Government. Also, this procedure will relieve you from having to refund the overwithholding out of your own funds after the overwithheld tax has been deposited or paid and Form 1042 filed for the calendar year.

When U.S. Taxpayer Identifying Numbers Are Required

Before you are authorized to allow an exemption from withholding for any payee who is subject to regular U.S. income tax, the payee's U.S. taxpayer identifying number must be furnished to you. These payees include resident alien individuals, regardless of whether they are living outside the United States, and all foreign payees with income effectively connected with a trade or business in the United States.

You must also furnish this identifying number on the Form 1042S filed with the Internal Revenue Service for these foreign payees with effectively connected income.

Unless a foreign payee who is not subject to regular U.S. income tax happens to have a U.S. identifying number for other reasons, and wishes to furnish such number, the payee is not required either to obtain one or to furnish one to you on Form 1001 in order to claim a reduced rate or exemption from withholding under a tax treaty.

You must furnish an employer identification number on your annual Form 1042 and on each Form 1042S. Under no circumstances should you use on Forms 1042 and 1042S, or on the Federal Tax Deposit Coupon, the identification number of the principal or person for whom you are making payments of income subject to withholding. Since the amounts on these forms are checked by the Internal Revenue Service, correct identification of you (the withholding agent) with tax deposits during the year is essential to avoid unnecessary correspondence, deficiency assessments, penalties, interest, or refunds.

The U.S. taxpayer identifying number is a social security number in the case of an individual and an employer identification number in all other cases. If a payee who is subject to regular U.S. income tax does not have a taxpayer identifying number, that payee should apply for one on Form SS–4 or SS–5, available from Social Security Administration district offices.

Backup withholding. A payer of interest, dividends, or patronage dividends, a broker, or a barter exchange may have to withhold 20% of each payment or transaction if the payee does not provide a correct taxpayer identification number. Generally, nonresident alien individuals and foreign corporations, partnerships, and estates and trusts that are not engaged in a U.S. trade or business and do not have an office or place of business in the United States are not required to have U.S. taxpayer identification numbers. They are not subject to any backup withholding because they are not required to have an identifying number and have no number to provide to a payer or broker.

Except in the case of dividends, the payee should use Form W–8, *Certificate of Foreign Status*, to tell the payer, broker, or barter exchange that the payee is a nonresident alien and is not subject to backup withholding. Form W–8 does not exempt the payee from the 30% (or lower treaty) withholding rate. Absent definite knowledge that a payee is a U.S. person, the payer of dividends may treat such payments to a payee with a foreign address as exempt from the possible application of backup withholding.

Returns Required

Forms 1042 and 1042S are required to be filed by withholding agents to report tax withheld at source.

Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.* Every U.S. withholding agent who has the control, receipt, custody, disposal, or payment of fixed or determinable annual or periodic income (as previously defined) and each Canadian withholding agent described earlier under *Withholding Agent*, must file an annual return on Form 1042 by March 15 of the year following the end of a calendar year. (If the regular due date for filing falls on a Saturday, Sunday, or legal holiday, the due date becomes the next business day.) You must file Form 1042 even though you did not withhold or deduct any income tax because of a specific exemption under Chapter 3 or under an income tax treaty between the United States and a foreign country.

You must file Form 1042 with the Internal Revenue Service Center, Philadelphia, PA 19255.

See Form 1042 and its instructions for more information on how to fill out the form.

Form 1042S, *Foreign Person's U.S. Source Income Subject to Withholding.* Every U.S. withholding agent must transmit with the annual Form 1042 the information called for on Form 1042S. Form 1042S must be filed no later than the due date for filing Form 1042. This information is furnished either on magnetic tape or on an original paper Form 1042S. A separate Form 1042S (or tape record) is required for each payee (recipient) of income to whom you made payments during the preceding calendar year regardless of whether you withheld or were required to withhold tax. You may use a separate Form 1042S for each type of income that you paid to the same payee; or you may report more than one specific type of income on the same Form 1042S for the same payee.

You must furnish a Form 1042S for each recipient even though you did not withhold tax because you released the tax withheld to the recipient or because the income payment was exempt from tax under certain provisions of the Internal Revenue Code, under a regulation, ruling, or procedure issued by the Internal Revenue Service, or under a U.S. income tax treaty. When you have adjusted the amount of the tax withheld during the calendar year for overwithheld amounts, show the net amount of tax withheld on the Form 1042S. Any certificate, statement, letter, or form relating to certain exemptions from withholding must be attached to the Form 1042 relating to the income subject to the exemption. See the earlier instructions to withholding agents under the various withholding exemptions and the related forms and instructions.

Be careful in entering on Form 1042S the proper country name and country code for each payee's latest country of legal residence according to information submitted to you.

Caution: As this publication was being prepared for print, Congress was considering legislation that would impose penalties for failure to file a correct Form 1042 and for failure to provide a Form 1042S to each payee. For additional information on any late legislative changes, get Publication 553, *Highlights of 1989 Tax Changes.*

Magnetic tape filing. Withholding agents or their agents who file 250 or more Forms 1042S with the Internal Revenue Service generally must use magnetic tape to file these returns.

A completed application Form 4419, *Application for Magnetic Media Reporting of Information Returns*, should be filed with the Martinsburg Computing Center at least 90 days before the due date of the return. Magnetic tape returns may not be filed until the application has been approved by the IRS.

Forms 1042S on magnetic tape should be sent to Magnetic Media Reporting, Internal Revenue Service, Martinsburg Computing Center, P.O. Box 1359, Martinsburg, West Virginia 25401–1359. If Form 1042S is filed on paper, it must accompany Form 1042 and be filed with the Internal Revenue Service Center, Philadelphia, PA 19255.

See Publication 1187, *Requirements and Conditions for Filing Form 1042S, Foreign Person's U.S. Source Income Subject to Withholding, on Magnetic Tape*, for more information.

Statements to payees. You must furnish a statement to each payee with respect to whom you are filing a Form 1042S (or magnetic tape report) with the Internal Revenue Service no later than the due date for filing Forms 1042 and 1042S. You may use a copy of Form 1042S for this purpose. However, you need not use a copy of the official Form 1042S, but may provide payees with the information together with or on other (commercial) statements or notices. Such payee statements must clearly identify the type of income (as described on the official form), the amount of tax withheld, the withholding rate (including 0% if exempt), and the country involved.

You must get prior annual approval to use a substitute Form 1042S. Request for such approval must be sent to Commissioner of Internal Revenue, Substitute Forms Program, 1111 Constitution Avenue, N.W., Washington, DC 20224, Attention: TR:R:R, and must be accompanied by an explanation as to why the substitute is necessary.

Extension of time to file. You may request an extension of time to file Forms 1042 and 1042S by sending a completed Form 2758, *Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns*, to the Internal Revenue Service Center, Philadelphia, PA 19255. You should submit Form 2758 far enough in advance of the due date of Forms 1042 and 1042S to allow the IRS time to consider your application and to reply before the due date of the return.

The IRS will generally not give an extension of more than 60 days unless you can clearly show the need for more time. No extension of more than 6 months will be given to an applicant in the United States.

See Form 2758 and its instructions for more information.

Partnership Withholding on Effectively Connected Income

A partnership (foreign or domestic) that has income effectively connected with a U.S. trade or business (or income treated as effectively connected) must pay a withholding tax of 28% or 34% of the effectively connected taxable income that is allocable to its foreign partners. A publicly traded partnership must withhold tax on actual distributions of effectively connected income, unless it chooses to withhold under these rules. See *Publicly Traded Partnerships*, later.

The withholding is paid in installments on Form 8813, *Partnership Withholding Tax Payment (Section 1446)*. An annual return is filed on Form 8804, *Annual Return for Partnership Withholding Tax (Section 1446)*. See *Reporting and Paying the Tax*, later.

This withholding tax does not apply to income that is ***not*** effectively connected with the partnership's U.S. trade or business. That income is subject to withholding tax at 30%, or a lower treaty rate, as discussed earlier in this publication.

Who Must Withhold

The partnership, or a withholding agent for the partnership, must pay the withholding tax. A partnership that is required to pay the withholding tax but fails to do so, may be liable for the payment of tax and penalties and interest.

Foreign Partner

The partnership must determine whether a partner is a foreign partner. A foreign partner can be a nonresident alien individual, foreign corporation, foreign partnership, or foreign estate or trust.

A partnership may rely on a partner's certification of non-foreign status and assume that a partner is not a foreign partner if the partner submits a certification to the partnership that:

1) States that the partner is not a foreign person,
2) Gives the partner's name, U.S. tax identifying number, and address,

3) States that the partner will notify the partnership within 60 days of a change to foreign status, and

4) Is signed under penalties of perjury.

Sample certifications are contained in section 5.04 of Revenue Procedure 89–31, 1989–20 I.R.B. 136.

The partnership must keep the certification 5 years after the last tax year in which the partnership relied on it.

Unless the partnership knows that the certification is incorrect, it may rely on it until one of the following happens:

1) The third year, after the partnership's tax year in which the certification was made, ends,

2) The partner notifies the partnership that it has become a foreign partner, or

3) The partnership learns that the partner is a foreign partner.

Widely held and publicly traded partnerships. A partnership with more than 200 partners or a publicly traded partnership may rely on statements received on Form 1001, Form W–8, or Form W–9 in lieu of the above certification. It may also rely on a certification from a nominee that a partner owning a partnership interest through the nominee is not a foreign partner. In this situation, the nominee may rely on a partner's certification of nonforeign status as described earlier, or it may rely on statements provided it on Forms 1001, W–8, or W–9.

Amount of Withholding Tax

The amount of withholding tax that a partnership is required to pay for the partnership's tax year is based on the partnership's effectively connected taxable income that is allocable to its foreign partners for that tax year.

The amount of a partnership's effectively connected taxable income that is allocable to a foreign partner is the foreign partner's distributive share of the partnership's gross effectively connected income reduced by the partner's distributive share of partnership deductions for the year. For information on effectively connected income and how to figure a partner's distributive share of income and deductions, see the *Instructions for Forms 8804, 8805, and 8813.*

A partnership must make installment payments of withholding tax on its foreign partners' share of effectively connected taxable income whether or not distributions are made during the partnership's tax year.

Tax rate. The withholding tax rate on a partner's share of effectively connected income is 34% for a partner taxed as a corporation, and 28% for all other partners, such as individuals, partnerships, and estates.

Amount of installment payment. The amount of a partnership's installment payment is the sum of the installment payments for each of its foreign partners. The amount of each foreign partner's installment payment of withholding tax can be figured by using the worksheet in the *Instructions for Forms 8804, 8805, and 8813.*

Date payments are due. Payments of withholding tax must be made during the partnership's tax year in which the effectively connected taxable income is derived. A partnership must pay the Internal Revenue Service a portion of the annual withholding tax for its foreign partners by the 15th day of the 4th, 6th, 9th, and 12th months of its tax year for U.S. income tax purposes. Any additional amounts due are to be paid with Form 8804, the annual partnership withholding tax return.

Real property gains. Domestic partnerships that are subject to the withholding requirements for effectively connected income do not have to withhold tax under the U.S. real property withholding rules, discussed later. If a partnership has withheld and paid over tax during its tax year on the disposition of a U.S. real property interest, those amounts will be credited against the partnership's tax liability for withholding on effectively connected income.

Reporting and Paying the Tax

There are three forms that are required for reporting and paying over tax withheld on effectively connected income allocable to foreign partners.

Form 8804. The total withholding tax liability of the partnership for its tax year is reported on Form 8804, *Annual Return for Partnership Withholding Tax (Section 1446).* Form 8804 is also a transmittal form for Forms 8805.

Any additional withholding tax owed for the partnership's tax year is paid to the IRS (in U.S. currency) with Form 8804. A Form 8805 for each foreign partner must be attached to Form 8804, whether or not any withholding tax was paid. The Form 8804 is separate from Form 1065 and attachments, and is not to be filed as part of Form 1065.

File Form 8804 on or before the 15th day of the 4th month after the close of the partnership's tax year. However, a partnership made up of all nonresident alien partners has until the 15th day of the 6th month after the close of the partnership's tax year to file. A partnership that has extended the due date for filing Form 1065 must file Form 8804 on or before that extended due date. If you need more time to file Form 8804, you may file Form 2758, *Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns,* to request an extension. Form 2758 does not extend the time for payment of tax.

Form 8805. A partnership must notify each foreign partner of its allocable share of each withholding tax payment made to the IRS. This notice may be used by the partner to adjust any estimated tax payments it might be required to make during the year.

At the end of the partnership's tax year, Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax,* must be sent to each foreign partner whether or not any withholding tax is paid. A copy of Form 8805 for each foreign partner must also be attached to Form 8804 when it is filed. Form 8805 should be delivered to the foreign partner by the due date of the partnership return (including extensions).

Form 8805 is used to show the amount of effectively connected taxable income and the tax payments allocable to the foreign partner for the partnership's tax year. A copy of Form 8805 must be attached to the foreign partner's U.S. income tax return in order to take a credit on its Form 1040NR or Form 1120F.

Form 8813. The payments of withheld tax are to be reported on Form 8813, *Partnership Withholding Tax Payment (Section 1446),* and paid to the IRS (in U.S. currency) by the payment dates shown above under *Date payments are due.*

Identifying Numbers. A partnership that has not been assigned a U.S. identifying number (Employer Identification Number) must obtain one. If a number has not been assigned by the due date of the first withholding tax payment, the partnership should enter the date the number was applied for on Form 8813 when making its payment. As soon as the partnership receives its identifying number, it must provide that number to the IRS.

To insure proper crediting of the withholding tax when reporting to IRS, the partnership must include each partner's U.S. identifying number on Form 8805. If there are partners in the partnership without identifying numbers, the partnership should inform them of the need to get a number.

Publicly Traded Partnerships

A publicly traded partnership that has effectively connected income, gain or loss, must pay withholding tax on any distributions of that income made to its foreign partners. In this situation, a publicly traded partnership must use Forms 1042 and 1042S (Income Code 25 for distributions made in 1989, and Income Code 27 for distributions made in 1990) to report withholding from distributions. The rate of withholding is 28% for distributions made to foreign partners after June 15, 1989.

A publicly traded partnership is any partnership an interest in which is regularly traded on an established securities market regardless of the number of its partners. This does not include a publicly traded partnership treated as a corporation under section 7704 of the Internal Revenue Code.

Foreign partner. The partnership determines whether a partner is a foreign partner using the rules discussed earlier under *Foreign Partner.*

Distributions subject to withholding. The partnership must withhold tax on any actual distributions of money or property to foreign partners. If the foreign partner is another partnership (tiered partnerships), special rules may apply. See the *Instructions for Forms 1042 and 1042S.*

If the distribution is in property other than money, the partnership cannot release the property until it has enough funds to pay over the withholding tax.

Withholding is required on the fair market value of a U.S. real property interest distributed to a foreign partner, even though subject to the withholding tax discussed later under *U.S. Real Property Interest.*

Withholding is also required on amounts that would be subject to the withholding requirements discussed under *U.S. Real Property Interest,* except that the distributee is a foreign corporation that has made an election under Internal Revenue Code section 897(i).

Excluded amounts. Partnership distributions are first considered to be paid out of the following two types of income in the order listed. These amounts are excluded from the withholding tax discussed here.

1) Amounts of noneffectively connected income distributed by the partnership and subject to the 30% withholding tax discussed earlier in this publication.

2) Amounts attributable to the disposition of a U.S. real property interest subject to the withholding rules discussed later under *U.S. Real Property Interest.*

Election. A publicly traded partnership can elect to pay a withholding tax on its effectively connected taxable income allocable to its foreign partners instead of on its actual distributions. If the partnership makes this election, it should follow the guidelines given in the earlier discussions and it will be required to file Forms 8804, 8805, and 8813 discussed earlier under *Reporting and Paying the Tax.* Once the election has been made, it cannot be revoked without the consent of the IRS.

Caution: As this publication was being prepared for print, Congress was considering legislation that would retroactively clarify that penalties may be imposed for failure to pay over withheld tax similar to the penalties imposed on corporations for failure to pay estimated tax. For additional information on any late legislative

changes, get Publication 553, *Highlights of 1989 Tax Changes.*

U.S. Real Property Interest

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to income tax withholding. The transferee is the withholding agent. As the transferee, you must deduct and withhold a tax equal to 10% (or other amount) of the total amount realized on the disposition (i.e., 10% of the purchase price). You must find out if the transferor is a foreign person, because if so and you fail to withhold, you may be held liable for the tax.

Note: For additional information on withholding on dispositions of U.S. real property interests, see section 1445 of the Internal Revenue Code and the regulations under this section, or write to the Internal Revenue Service, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

The term ***transferor*** means any person, foreign or domestic, that disposes of a U.S. real property interest by sale, exchange, gift, or any other transfer. A transfer includes distributions to shareholders of a corporation, partners of a partnership, and beneficiaries of a trust or estate. The term ***transferee*** means any person, foreign or domestic, that acquires a U.S. real property interest by purchase, exchange, gift, or any other transfer.

The ***amount realized*** by the transferor is the sum of:

1) The cash paid, or to be paid (principal only),
2) The fair market value of other property transferred, or to be transferred, and
3) The outstanding amount of any liability assumed by the transferee or to which the property is subject immediately before and after the transfer.

The term ***U.S. real property interest*** means an interest, other than as a creditor, in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the Virgin Islands, as well as certain personal property that is associated with the use of real property (such as farming machinery). It also means any interest, other than as a creditor, in any domestic corporation unless it is established that the corporation was at no time a U.S. real property holding corporation during the shorter of the period after June 18, 1980, during which the interest was held, or the 5-year period ending on the date of disposition. If on the date of disposition, the corporation did not hold any U.S. real property interests, and all such interests held at any time during the shorter of the applicable periods were disposed of in transactions in which the full amount of any gain was recognized, then an interest in the corporation is not a U.S. real property interest.

Corporations, partnerships, trusts, and estates. Withholding is required on certain distributions and other transactions by domestic or foreign corporations, partnerships, trusts, and estates.

A partnership (as the withholding agent) must withhold a tax equal to 34% of each foreign partner's distributive share of the gain realized by the partnership on the disposition of each U.S. real property interest.

A trustee, fiduciary, or executor of a trust or estate having one or more foreign beneficiaries must act as withholding agent and must establish a U.S. real property interest account and enter in the account all gains and losses realized during the taxable year of the trust or estate from dispositions of U.S. real property interests. The withholding agent must withhold 34% on any distribution to a foreign beneficiary that is attributable to the balance in the real property interest account on the day of the distribution. A distribution from a trust or estate to a beneficiary (foreign or domestic) will be treated as attributable first to any balance in the U.S. real property interest account and then to other amounts.

A foreign corporation that distributes a U.S. real property interest must deduct and withhold a tax equal to 34% of the amount of gain recognized by the corporation on the distribution.

Publicly traded partnerships and trusts are those with interests regularly traded on an established securities market. Distributions from the disposition of a U.S. real property interest by publicly traded partnerships, trusts, and real estate investment trusts (REIT) are generally subject to the withholding rules in Code section 1445 and the regulations thereunder. However, the method of paying over and reporting the tax withheld is different. See *Reporting*, next, and Regulation section 1.1445-8T for more information.

For more information on withholding on distributions from dispositions of U.S. real property interests by domestic partnerships, trusts and estates to foreign persons, see Code section 1445(e), Regulation section 1.1445-5, and Regulation section 1.1445-11T. For information on applications for withholding certificates for those distributions, see *Withholding Certificates*, later, and section 8 of Revenue Procedure 88-23, 1988-1 C.B. 787.

Reporting

You must report and pay to the Internal Revenue Service any tax withheld by the 20th day after the date of the transfer. Form 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests*, and Form 8288-A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests*, are used for this purpose and must be filed with the Internal Revenue Service Center, Philadelphia, PA 19255.

For publicly traded partnerships, publicly traded trusts, and real estate investment trusts you must use Forms 1042 and 1042S for reporting and paying over tax withheld on distributions from dispositions of U.S. real property interests. Income Codes 24, 25, and 26 are to be used on Form 1042S for transactions involving these entities.

The responsibility for withholding, the manner of depositing the tax withheld, and the method of reporting these withheld amounts are the same as discussed in this publication for Forms 1042 and 1042S.

If an application for a withholding certificate is submitted on the day of, or at any time prior to, the date of a transfer, and on the date of transfer the application is still pending with the Service, the amount required to be withheld by the transferee is not required to be reported and paid over immediately. That amount (or other appropriate amount) must be reported and paid over within 20 days following the day on which a copy of the withholding certificate or notice of denial is mailed by the Service.

If the principal purpose of applying for a withholding certificate is to delay paying over the withheld tax to the IRS, the transferee will be subject to interest and penalties. The interest and penalties will be assessed beginning on the 21st day after the transfer until the day payment is made on the amount ultimately paid.

Withholding Certificates

If tax is required to be withheld, the rate is generally 10%. However, the amount required to be withheld from any disposition can be adjusted pursuant to a withholding certificate issued by the Internal Revenue Service. You or the transferor may request a withholding certificate. The Service will generally act on these requests within 90 days after receipt of a complete application.

A withholding certificate may be issued due to:

1) A determination by the Service that reduced withholding is appropriate because either:
   a) The amount required to be withheld would be more than the transferor's maximum tax liability, or
   b) Withholding of the reduced amount would not jeopardize collection of the tax,
2) The exemption from U.S. tax of all gain realized by the transferor, or
3) An agreement for the payment of tax providing security for the tax liability, entered into by the transferee or transferor.

Categories. All applications for withholding certificates are divided into six basic categories. This categorizing provides for specific information that is needed to process the applications. The six categories are:

1) Applications based on a claim that the transfer is entitled to nonrecognition treatment or is exempt from tax.
2) Applications based solely on a calculation of the transferor's maximum tax liability.
3) Applications under special installment sale rules.
4) Applications based on an agreement for the payment of tax with conforming security.
5) Applications for blanket withholding certificates.
6) Applications on any other basis.

An application for a withholding certificate under categories 1, 2, and 3 must be submitted to the Director, Internal Revenue Service Center, P.O. Box 21086, Philadelphia, PA, 19114. An application for a withholding certificate under categories 4, 5, and 6 must be submitted to the Assistant Commissioner (International), Director, Office of Taxpayer Service and Compliance, Attention:IN:C:E, 950 L'Enfant Plaza, South, S.W., Comsat Building, Washington, DC 20024.

Format for Applications

Use Form 8288-B, *Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests*, to apply for a withholding certificate under categories 1, 2, and 3. Follow the instructions given here for applications under categories 4, 5, and 6.

The application must be signed by the individual, or a duly authorized agent (with a copy of the power of attorney attached), a responsible officer in the case of a corporation, a general partner in the case of a partnership, or a trustee, executor, or equivalent fiduciary in the case of a trust or estate. The person signing the application must verify under penalties of perjury that all representations are true, correct, and complete to that person's knowledge and belief. If the application is based in whole or in part on information provided by another party to the transaction, that information must be supported by a written verification signed under penalties of perjury by that party and attached to the application.

All applications for withholding certificates must use the following format. The information must be provided in paragraphs labeled to correspond with the numbers and letters set forth below. If the information requested is not applicable to the application, place "N/A" in the relevant space.

1) Information on the application category:
   a) State which category describes the application (see *Categories* earlier),
   b) If a Category 4 application:
      (i) State whether the proposed agreement secures (A) the transferor's maximum tax liability, or (B) the amount that would

otherwise be required to be withheld, and

(ii) State whether the proposed agreement and security instrument conform to the standard formats.

2) Information on the transferee or transferor:
   a) The name, address, and identifying number, if any, of the person applying for the withholding certificate.
   b) State whether that person is the transferee or transferor.
   c) The name, address, and identifying number, if any, of all other transferees and transferors of the U.S. real property interest for which the withholding certificate is sought.

3) Information on the U.S. real property interest for which the withholding certificate is sought:
   a) Type of interest (such as, interest in real property, in associated personal property, or in a domestic U.S. real property holding corporation),
   b) Contract price,
   c) Date of transfer,
   d) Location and general description if an interest in real property, and
   e) Class or type and amount of the interest in a U.S. real property holding corporation.

4) Provide full information concerning the basis for the issuance of the withholding certificate. Although the information to be included in this section of the application will vary from case to case, the following rules provide general guidelines for the inclusion of appropriate information for each category of application.

Category 4 applications. If the application is based on an agreement for the payment of tax, the application must include:

1) Information establishing the transferor's maximum tax liability, or the amount otherwise required to be withheld,
2) A signed copy of the agreement proposed by the applicant, and
3) A copy of the security instrument proposed by the applicant.

Either the transferee or the transferor may enter into an agreement for the payment of tax. The agreement is a contract between the Service and any other person and consists of two necessary elements. Those elements are:

1) A detailed description of the rights and obligations of each, and
2) A security instrument or other form of security acceptable to the Assistant Commissioner (International).

For more information on the agreement for the payment of tax, including a sample agreement, see section 5 of Revenue Procedure 88–23.

There are four major types of security acceptable to the Service. They are:

1) Bond with surety or guarantor,
2) Bond with collateral,
3) Letter of credit, and
4) Guarantee (corporate transferors).

The Service may, in unusual circumstances and at its discretion, accept any additional form of security that it finds to be adequate.

For more information on acceptable security instruments, including sample forms of such instruments, see section 6 of Revenue Procedure 88–23.

Category 5 applications. A blanket withholding certificate may be issued if the transferor holding the U.S. real property interests provides an irrevocable letter of credit and enters into a tax payment and security agreement with the Service. A blanket withholding certificate excuses withholding with respect to multiple dispositions of such property interests by the transferor or the transferor's legal representative during a period of no more than 12 months.

For more information, see section 9 of Revenue Procedure 88–23.

Category 6 applications. These are nonstandard applications and may be of the following types.

Agreement for payment of tax with nonconforming security. An applicant seeking to enter into an agreement for the payment of tax but wanting to provide a nonconforming type of security must include the following in the application:

1) The information required for *Category 4 applications*, discussed earlier,
2) A description of the nonconforming security proposed by the applicant, and
3) A memorandum of law and facts establishing that the proposed security is valid and enforceable and that it adequately protects the government's interest.

Other nonstandard applications. An application for a withholding certificate not previously described must explain in detail the proposed basis for the issuance of the certificate and set forth the reasons justifying the issuance of a certificate on that basis.

Availability of records. The applicant must make available to the Service, within the time prescribed, all information required to verify that representations relied upon in accepting the agreement are accurate, and that the obligations assumed by the applicant will be performed pursuant to the agreement. Failure to provide requested information promptly will usually result in rejection of the application, unless the Service grants an extension of the target date.

Amendments to Applications

An applicant for a withholding certificate may amend an otherwise complete application by submitting an amending statement to the Assistant Commissioner (International). There is no particular form required, but the amending statement must provide the following information:

1) The name, address, and identifying number (if any) of the person submitting the amending statement specifying whether that person is the transferee or transferor.
2) The date of the original application for a withholding certificate that is being amended.
3) A brief description of the real property interest for which the original application for a withholding certificate was submitted.
4) The basis for the amendment including any change in the facts supporting the original application for a withholding certificate and any change in the terms of the withholding certificate.

The statement must be signed and accompanied by a penalties of perjury statement (discussed earlier under *Format for Applications*).

If an amending statement is submitted, the time in which the Service must act upon the amended application is extended by 30 days. If the amending statement substantially changes the original application, the time for acting upon the application will be extended by 60 days. If an amending statement is received after the withholding certificate has been signed by the Assistant Commissioner (International) or his delegate but has not been mailed to the applicant, the Service will have a 90-day extension of time in which to act.

Exemptions

If any of the following situations apply, you are not required to withhold tax.

1) The transferor furnishes you with a certification, signed under penalties of perjury, that the transferor is not a foreign person and that contains the transferor's name, identifying number, and home address (office address if not an individual).
2) The disposition is of an interest in a domestic corporation and that corporation furnishes you a certification stating, under penalties of perjury, that the interest is not a U.S. real property interest, or as of the date of disposition, the interest in the corporation is not a U.S. real property interest by reason of section 897(c)(1)(B) of the Internal Revenue Code. The certification must be dated not more than 30 days prior to the date of transfer.
3) You receive a withholding certificate from the Internal Revenue Service that excuses withholding. See *Withholding Certificates*.
4) You acquire the property for use as your residence and the amount realized (purchase price) is not more than $300,000. You must have definite plans to reside at the residence for at least 50% of the number of days the property is in use during each of the first two 12–month periods following the date of transfer.
5) The disposition is of a share of a class of stock that is regularly traded on an established securities market or of certain interests in a publicly traded partnership or trust.

Certifications. The certifications in items (1) and (2) are not effective if you have actual knowledge, or receive a notice from an agent, that they are false. If you are required by regulations to furnish a copy of the certification to the Service and you fail to do so in the time and manner prescribed, the certifications are not effective.

Liability of agents. If you receive either of the certifications discussed in item (1) or (2) above and the transferor's agent or your agent (the transferee's agent) has actual knowledge that the certification is false, or in the case of (2) above, that the corporation is a foreign corporation, the agent must notify you, or the agent will be held liable for the tax. The agent's liability is limited to the amount of compensation the agent gets from the transaction.

An agent is any person who represents the transferor or transferee in any negotiation with another person (or another person's agent) relating to the transaction, or in settling the transaction. A person is not treated as an agent if the person only performs one or more of the following acts:

1) The receipt and the disbursement of any part of the consideration for the transaction,
2) The recording of any document in connection with the transaction, or
3) Typing, coding, and other clerical tasks.

Tax Treaty Tables

The United States has income tax treaties (or conventions) with a number of foreign countries under which residents (sometimes limited to citizens) of those countries are taxed at a reduced

rate or are exempt from U.S. income taxes on certain income received from within the United States.

Three tables follow:

Table 1 lists the withholding rates on income other than personal service income.

Table 2 lists the different types of personal service income that are entitled to an exemption from, or reduction in, withholding.

Table 3 shows where the full text of each treaty and protocol may be found in the Internal Revenue Bulletins or Cumulative Bulletins.

These tables are not meant to be a complete guide to all provisions of every income tax treaty. For detailed information, you must consult the provisions of the tax treaty that apply to the country of the nonresident taxpayer to whom you are making payment.

Income that is exempt from U.S. income taxes under these treaties is not included in gross income of the nonresident alien for U.S. income tax purposes. To the extent this income is exempt under the treaty, it is also not subject to withholding at the source under the statutory rules discussed in this publication.

Table 1.—Withholding Tax Rates on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties—For Withholding in 1990

Income code number		1	2	3	5			6	7	9	10	11	12	13	14
Country of residence of payee					Interest on tax-free covenant bonds issued before 1934			Dividends paid by				Copyright royalties			
Name	Code	Interest paid by U.S. obligors general	Interest on real property mortgages	Interest paid to controlling foreign corporations	If obligor assumes more than 2% of tax	If obligor assumes 2% or less of tax	Maturity date extended after 1933 and obligor assumes over 27½% of tax	U.S. corporations general[a]	U.S. subsidiaries to foreign parent corporations[a]	Capital gains[v]	Industrial royalties	Motion pictures and television	Other	Real property income and natural resources royalties[w]	Pensions and annuities
Australia	AS	[g]10	[g]10	[g]10	2	[g]10	[g]10	[g]15	[g]15	30	[g]10	[g]10	[g]10	30	[x]0
Austria	AU	[h]0	30	[h]0	[h]0	[h]0	[h]0	[h]15	[bh]5	30	[h]0	[h]10	[h]0	30	[x]0
Barbados	BB	[g]12½	[g]12½	[g]12½	2	[g]12½	[g]12½	[g]15	[bg]5	[g]0	[g]12½	[g]12½	[g]12½	30	[x]0
Belgium	BE	[g]15	[g]15	[g]15	2	[g]15	[g]15	[g]15	[bg]5	[bg]0	[x]0	[x]0	[x]0	30	[x]0
Canada	CA	[g]15	[g]15	[g]15	2	[g]15	[g]15	[g]15	[g]10	[i]30	[g]10	[g]10	[x]0	30	[i]15
China, People's Republic of	CH	[g]10	[g]10	[g]10	2	[g]10	[g]10	[g]10	[g]10	30	[gr]10	[g]10	[g]10	30	[x]0
Cyprus	CY	[g]10	[g]10	[g]10	2	[g]10	[g]10	[g]15	[bg]5	[g]0	[x]0	[x]0	[x]0	30	[x]0
Denmark	DA	[h]0	[h]0	[h]0	[h]0	[h]0	[h]0	[h]15	[b]5	30	[h]0	[h]0	[h]0	30	[x]0
Egypt	EG	[h]15	30	[h]15	2	[h]15	[h]15	[h]15	[bh]5	[chi]0	[h]0	[h]0	[g]15	30	[x]0
Finland	FI	[x]0	[x]0	[x]0	[x]0	[x]0	[x]0	[g]15	[bg]5	[cg]0	[x]0	[x]0	[x]0	30	[x]0
France	FR	[x]0	[x]0	[x]0	[x]0	[x]0	[x]0	[g]15	[bg]5	[cg]0	[b]5	[x]0	[x]0	30	[x]0
Germany, Fed. Rep. of	GE	[x]0	[x]0	[x]0	[x]0	[x]0	[x]0	[g]15	[g]15	[cg]0	[x]0	[x]0	[x]0	30	[x]0
Greece	GR	[h]0	[h]0	30	[h]0	[h]0	[h]0	30	30	30	[h]0	30	[h]0	30	[x]0
Hungary	HU	[x]0	[x]0	[x]0	[x]0	[x]0	[x]0	[g]15	[bg]5	[g]0	[x]0	[x]0	[x]0	30	[x]0
Iceland	IC	[x]0	[x]0	[x]0	[x]0	[x]0	[x]0	[g]15	[bg]5	[cg]0	[x]0	30	[x]0	30	[x]0
Ireland	EI	[ch]0	[ch]0	30	[ch]0	[ch]0	[ch]0	[ch]15	[bch]5	30	[ch]0	[ch]0	[ch]0	[ch]15	[x]0
Italy	IT	[g]15	[g]15	[g]15	2	[g]15	[g]15	[g]15	[bg]5	[g]0	[gr]10	[g]8	[g]5	30	[x]0
Jamaica	JM	[g]12½	[g]12½	[g]12½	2	[g]12½	[g]12½	[g]15	[bg]10	[g]0	[g]10	[g]10	[g]10	30	[chi]0
Japan	JA	[g]10	[g]10	[g]10	2	[g]10	[g]10	[g]15	[bg]10	[cg]0	[g]10	[g]10	[g]10	30	[x]0
Korea, Rep. of	KS	[g]12	[g]12	[g]12	2	[g]12	[g]12	[g]15	[bg]10	[mg]0	[g]15	[g]10	[g]10	30	[x]0
Luxembourg	LU	[h]0	30	[h]0	[h]0	[h]0	[h]0	[h]15	[bh]5	30	[h]0	[h]0	[h]0	30	[x]0
Malta	MT	[g]12½	[g]12½	[g]12½	2	[g]12½	[g]12½	[g]15	[bg]5	[g]0	[g]12½	[g]12½	[x]0	30	0
Morocco	MO	[g]15	[g]15	[g]15	2	[g]15	[g]15	[g]15	[bg]10	[mg]0	[g]10	[g]10	[g]10	30	[x]0
Netherlands	NL	[x]0	[x]0	[x]0	[x]0	[x]0	[x]0	[g]15	[bg]5	[cg]0	[x]0	[x]0	[x]0	30	[x]0
Netherlands Antilles, Aruba[n]	NA, AA	[h]0	30	30	30	30	30	30	30	30	30	30	30	30	30
New Zealand	NZ	[g]10	[g]10	[g]10	2	[g]10	[g]10	[g]15	[g]15	[g]0	[g]10	[g]10	[g]10	30	[x]0
Norway	NO	[x]0	[x]0	[x]0	[x]0	[x]0	[x]0	[g]15	[g]15	[mg]0	[x]0	[x]0	[x]0	30	[x]0
Pakistan	PK	30	30	30	2	30	27½	30	[bh]15	30	[h]0	30	[h]0	30	[x]0
Philippines	RP	[g]15	[g]15	[g]15	2	[g]15	[g]15	[g]25	[bg]20	[g]0	[g]15	[g]15	[g]15	30	[g]30
Poland	PL	[x]0	[x]0	[x]0	[x]0	[x]0	[x]0	[g]15	[bg]5	[cg]0	[g]10	[g]10	[g]10	30	30
Romania	RO	[g]10	[g]10	[g]10	2	[g]10	[g]10	[g]10	[g]10	[mg]0	[g]15	[g]10	[g]10	30	[x]0
Sweden	SW	[h]0	[h]0	[h]0	[h]0	[h]0	[h]0	[h]15	[bh]5	[mh]0	0	0	0	30	[x]0
Switzerland	SZ	[h]5	[h]5	[h]5	2	[h]5	[h]5	[h]15	[bh]5	30	[h]0	[h]0	[h]0	30	[x]0
Trinidad & Tobago	TD	30	30	30	2	30	27½	30	30	30	[g]15	30	[x]0	30	[x]0

Table 1.—Continued

Income code number		1	2	3	5			6	7	9	10	11	12	13	14
Country of residence of payee					Interest on tax-free covenant bonds issued before 1934			Dividends paid by				Copyright royalties			
Name	Code	Interest paid by U.S. obligors general	Interest on real property mortgages	Interest paid to controlling foreign corporations	If obligor assumes more than 2% of tax	If obligor assumes 2% or less of tax	Maturity date extended after 1933 and obligor assumes over 27½% of tax	U.S. corporations general[a]	U.S. subsidiaries to foreign parent corporations[a]	Capital gains[c]	Industrial royalties	Motion pictures and television	Other	Real property income and natural resources royalties[d]	Pensions and annuities
Union of Soviet Socialist Republics	UR	[e]0	30	30	2	30	27½	30	30	[f]0	0	0	0	30	30
United Kingdom	UK	[g]0	[h]0	[g]0	[g]0	[g]0	[g]0	[i]15	[h][j]5	30	[g]0	[k]0	[g]0	30	[h][l]0
Other countries	OC	30	30	30	2	30	27½	30	30	30	30	30	30	30	30

[a] No U.S. tax is imposed on a percentage of any dividend paid by a U.S. corporation that received at least 80% of its gross income from an active foreign business for the 3-year period before the dividend is declared. (See sections 871(i)(2)(B) and 881(d) of the Internal Revenue Code.)

[b] The reduced rate applies to dividends paid by a subsidiary to a foreign parent corporation that has the required percentage of stock ownership. In some cases, the income of the subsidiary must meet certain requirements (e.g. a certain percentage of its total income must consist of income other than dividends and interest). In the case of Italy, the reduced rate is 10% if the foreign corporation owns 10% to 50% of the voting stock (for a 12-month period) of the company paying the dividends.

[c] The exemption or reduction in rate applies only if the recipient is subject to tax on this income in the country of residence. Otherwise a 30% rate applies.

[d] Exemption does not apply to U.S. Government (federal, state, or local) pensions and annuities; a 30% rate applies to these pensions and annuities. In the case of the United Kingdom, U.S. government pensions paid to individuals who are both U.K. residents and nationals are exempt from U.S. taxation.

[e] The treaty exemption that applies to U.S. source capital gains includes capital gains under section 871(a)(2) if they are received by a nonresident alien who is in the U.S. for not more than 183 days. (182 days for Belgium and Egypt.)

[f] Includes alimony.

[g] Under the treaty the exemption or reduction in rate does not apply if the recipient has a permanent establishment in the United States and the property giving rise to the income is effectively connected with this permanent establishment. In the case of Australia, Barbados, Canada, China, Cyprus, France, Hungary, Italy, Jamaica, Malta, New Zealand, Philippines, and the United Kingdom, the exemption or reduction in rate also does not apply if the property giving rise to the income is effectively connected with a fixed base in the United States from which the recipient performs independent personal services (professional services for royalties paid to a Philippines resident). Even with the treaty, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a permanent establishment in the United States under IRC section 894(b).

[h] Under the treaty the exemption or reduction in rate does not apply if the recipient is engaged in a trade or business in the United States through a permanent establishment that is in the United States. However, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a permanent establishment in the United States for the purpose of applying the reduced treaty rate to that item of income. IRC section 894(b).

[i] Bangladesh has not indicated that it wishes to assume the responsibilities or exercise the rights of the United States—Pakistan income tax treaty.

[j] Exemption is not available when paid from a fund, under an employees' pension or annuity plan, if contributions to it are deductible under U.S. tax laws in determining taxable income of the employer.

[k] Exemption from or reduction in rate of does not apply to income of holding companies entitled to special tax benefits under the laws of Luxembourg.

[l] Exemption does not apply to gains from the sale of real property.

[m] Treaty terminated January 1, 1988, except that the exemption from tax provided in Article VIII for certain interest will remain in force.

[n] The exemption applies only to interest on credits, loans, and other indebtedness connected with the financing of trade between the United States and the Union of Soviet Socialist Republics. It does not include interest from the conduct of a general banking business.

[o] The exemption applies only to gains from the sale or other disposition of property acquired by gift or inheritance.

[p] The exemption does not apply if the recipient was a resident of the United States when the pension was earned or when the annuity was purchased.

[q] Annuities paid in return for other than the recipient's personal services are exempt.

[r] Generally, if the property was owned by the Canadian resident on September 26, 1980, not as part of the business property of a permanent establishment or fixed base in the U.S., the taxable gain is limited to the appreciation after 1984. Capital gains on personal property not belonging to a permanent establishment or fixed base of the taxpayer in the U.S. are exempt.

[s] Under the treaty, the reduced rate for royalties with respect to tangible personal property is 7%.

[t] Does not include alimony; alimony is exempt.

[u] Withholding at 30% may not be required on the disposition of U.S. real property interests. See *U.S. Real Property Interest* earlier in this publication.

[v] Tax imposed on 70% of gross royalties for rentals of industrial, or scientific equipment.

Table 2.—Compensation for Personal Services Performed in United States Exempt from Withholding and U.S. Income Tax Under Income Tax Treaties

Country (1)	Category of Personal Services: Code[1] (2)	Category of Personal Services: Purpose (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Australia	16	Independent personal services[1,22]	183 days	Any contractor	No limit	14
	20	Public entertainment[22]	183 days	Any contractor	$10,000	17
	17	Dependent personal services[17]	183 days	Any foreign resident	No limit	15
	20	Public entertainment[17]	183 days	Any foreign resident	$10,000	17
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	20
Austria	15	Scholarship or fellowship grant	No limit	Any U.S. or foreign resident[5]	No limit	XIII(3)
	16	Independent personal services[22]	183 days	Austrian resident contractor	No limit	X
			183 days	Other foreign or U.S. resident contractor	$3,000	X
	17	Dependent personal services	183 days	Austrian resident	No limit	X
			183 days	Other foreign or U.S. resident	$3,000	X
	18	Teaching	2 years	U.S. educational institution	No limit	XII
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	XIII(1)&(2)
		Compensation while gaining experience[2]	1 year	Austrian resident	$10,000[3]	XIII(4)
Barbados	16	Independent personal services[1,8,22]	89 days	Any contractor	No limit	14
			89 days	Any U.S. contractor	$5,000 p.a.	14
	20	Public entertainment[22]	No limit	Any contractor	$250 per day[6] or $4,000 p.a.	17
	17	Dependent personal services[8,17]	183 days	Any foreign resident	$5,000 p.a.	15
	20	Public entertainment	No limit	Any U.S. or foreign resident	$250 per day[6] or $4,000 p.a.	17
	19	Studying and training:[23]				
		Remittance or allowances[11]	No limit	Any foreign resident	No limit	20[11]
Belgium	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	21(1)
	16	Independent personal services[1,22]	182 days	Any contractor	No limit	14(2)(a)(b)
	20	Public entertainment[22]	90 days	Any contractor	$3,000	14(2)(c)
	17	Dependent personal services	182 days	Belgian resident	No limit	15
	18	Teaching[2]	2 years	U.S. educational institution	No limit	20
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	21(1)
		Compensation during training	5 years	U.S. resident	$2,000 p.a.	21(1)
			12 consec. mo.	Belgian resident	$5,000	21(2)(b)
		Compensation while gaining experience[2]	12 consec. mo.	Belgian resident	$5,000	21(2)(a)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	21(3)
Canada	16	Independent personal services[7,22]	No limit	Any contractor	No limit[13]	XIV
	17	Dependent personal services	No limit	Any U.S. or foreign resident	$10,000	XV
			183 days	Any foreign resident[17]	No limit[13]	XV
	19	Studying and training:				
		Remittances or allowances[11]	No limit	Any foreign resident	No limit	XX

Table 2.—Continued

Country (1)	Code[1] (2)	Category of Personal Services — Purpose (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
China, People's Republic of	15	Scholarship or fellowship grant[15]	No limit	Any U.S. or foreign resident[5]	No limit	20(b)
	16	Independent personal services[7,22]	183 days	Any contractor	No limit[13]	13
	17	Dependent personal services[6,17]	183 days	Any foreign resident	No limit[13]	14
	18	Teaching or research	3 years	U.S. educational or research institute	No limit	19
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	20(a)
		Compensation during training or while gaining experience	No limit	Any U.S. or foreign resident	$5,000 p.a.	20(c)
Cyprus	15	Scholarship or fellowship grant[15]	Gen., 5 yrs.	Any U.S. or foreign resident[5]	No limit	21(1)
	16	Independent personal services[7,22]	182 days	Any contractor	No limit	17
	20	Public entertainment[22]	No limit	Any contractor	$500 per day[4] or $5,000 p.a.	19(1)
	17	Dependent personal services[17]	182 days	Any foreign resident	No limit	18
		Director's fees	No limit	U.S. corporation	No limit[21]	20
	20	Public entertainment	No limit	Any U.S. or foreign resident	$500 per day[4] or $5,000 p.a.	19(1)
	19	Studying and training:				
		Remittances or allowances	Gen., 5 yrs.	Any foreign resident	No limit	21(1)
		Compensation during training	Gen., 5 yrs.	U.S. or any foreign resident	$2,000 p.a.	21(1)
		Compensation while gaining experience[7]	1 year	Cyprus resident	$7,500	21(2)
		Compensation while under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	21(3)
Denmark	16	Independent personal services[22]	180 days	Danish resident contractor	No limit	XI
			90 days	Other foreign or U.S. resident contractor	$3,000	XI
	17	Dependent personal services	180 days	Danish resident	No limit	XI
			90 days	Other foreign or U.S. resident	$3,000	XI
	18	Teaching	2 years	U.S. educational institution	No limit	XIV
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	XIII
Egypt	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident	No limit	23(1)
	16	Independent personal services[22]	89 days	Any foreign contractor	No limit	15
	20	Public entertainment[22]	No limit	Any contractor	$400 per day	17
	17	Dependent personal services[16,17]	89 days	Egyptian resident	No limit	16
	20	Public entertainment	No limit	Any U.S. or foreign resident	$400 per day	17
	18	Teaching[1]	2 years	U.S. educational institution	No limit	22
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	22(1)
		Compensation during training	5 years	U.S. or any foreign resident	$3,000 p.a.	22(1)
		Compensation while gaining experience	12 consec. mo.	Egyptian resident	$7,500	23(2)
		Compensation while under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	23(3)
Finland	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	21(1)
	16	Independent personal services[22]	183 days	Any contractor	No limit	18
	17	Dependent personal services[17]	183 days	Any foreign resident	No limit	19
	18	Teaching[1]	2 years	U.S. educational institution	No limit	20
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	21(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.[8]	21(1)
			12 consec. mo.	Finnish resident	$5,000[9]	21(2)
		Compensation while gaining experience[7]	12 consec. mo.	Finnish resident	$5,000[9]	21(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000[8]	21(3)

Table 2.—Continued

France	15	Scholarship or fellowship grant[1]	5 years	Any U.S. or foreign resident[1]	No limit	18(1)
	16	Independent personal services[1,22]	183 days	Any contractor	No limit[11]	14
	17	Dependent personal services[11]	183 days	Any foreign resident	No limit[11]	15
	18	Teaching[1]	2 years	U.S. educational or research institution	No limit	17
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	18(1)
		Compensation during training	5 years	U.S. resident	$2,000 p.a.	18(1)
			1 year	French resident	$5,000	18(2)
		Compensation while gaining experience	1 year	French resident	$5,000	18(2)
Germany, Fed. Rep. of	15	Scholarship or fellowship grant	No limit	Any U.S. or foreign resident[1]	No limit	XIII(3)
	16	Independent personal services[11,22]	183 days	German resident contractor	No limit	X
	17	Dependent personal services[11]	183 days	German resident	No limit	X
	18	Teaching	2 years	U.S. educational institution	No limit	XII
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	XIII(1) & (2)
		Compensation while gaining experience[2]	1 year	German nonprofit organization	$10,000	XIII(4)
Greece	16	Independent personal services[22]	183 days	Greek resident contractor	No limit	X
			183 days	Other foreign or U.S. resident contractor	$10,000	X
	17	Dependent personal services	183 days	Greek resident	No limit	X
			183 days	Other foreign or U.S. resident	$10,000	X
	18	Teaching	3 years	U.S. educational institution	No limit	XII
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	XIII
Hungary	16	Independent personal services[1,22]	183 days	Any contractor	No limit	13
	17	Dependent personal services[11]	183 days	Any foreign resident	No limit	14
	18	Teaching[1]	2 years	U.S. educational institution	No limit	17
	19	Studying and training:[23]				
		Remittances or allowances[11]	No limit	Any foreign resident	No limit	16(1)
Iceland	15	Scholarship or fellowship grant[11]	5 years	Any U.S. or foreign resident[5]	No limit	22(1)
	16	Independent personal services[11,22]	182 days	Any contractor	No limit	18
	20	Public entertainment[22]	90 days	Any resident contractor	$100 per day	18
	17	Dependent personal services[11]	182 days	Iceland resident[15]	No limit	19
	18	Teaching[1]	2 years	U.S. educational institution	No limit	21
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	22(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	22(1)
		Compensation while gaining experience	12 consec. mo.	Iceland resident	$5,000	22(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	22(3)
Ireland	16	Independent personal services[22]	183 days	Irish resident contractor	No limit	XI
	17	Dependent personal services	183 days	Irish resident	No limit	XI
	18	Teaching	2 years	U.S. educational institution	No limit	XVIII
	19	Studying and training:				
		Remittances or allowances[11]	No limit	Irish resident	No limit	XIX
Italy	16	Independent personal services[1,22]	183 days	Any contractor	No limit	14
	20	Public entertainment[22]	90 days	Any contractor	$12,000 p.a.	17(1)
	17	Dependent personal services[5,11]	183 days	Any foreign resident	No limit	15
	20	Public entertainment	90 days	Any U.S. or foreign resident	$12,000 p.a.	17(1)
	18	Teaching[1]	2 years	U.S. educational institution	No limit	20
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	21

Table 2.—Continued

Country (1)	Code[1] (2)	Category of Personal Services — Purpose (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Amount of Compensation (6)	Treaty Article Citation (7)
Jamaica	16	Independent personal services[1,20]	89 days	Any foreign contractor	No limit	14
			89 days	Any U.S. contractor	$5,000 p.a.	14
	20	Public entertainment[21]	No limit	Any contractor	$400 per day[6] or $5,000 p.a.	18
	17	Dependent personal services[17]	183 days	Any foreign resident	$5,000 p.a.	15
	20	Public entertainment	No limit	Any U.S. or foreign resident	$400 per day[6] or $5,000 p.a.	18
		Directors' fees	No limit	U.S. resident	$400 per day[6]	16
	18	Teaching[7]	2 years	U.S. educational institution	No limit	22
	19	Studying and training:[23]				
		Remittances or allowances [11]	No limit	Any foreign resident	No limit	21(1)
		Compensation during study	12 consec. mo.	Jamaican resident	$7,500 p.a.	21(2)
		Compensation while gaining experience [7]	12 consec. mo.	Jamaican resident	$7,500 p.a.	21(2)
Japan	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	20(1)
	16	Independent personal services[7,22]	183 days	Any contractor	No limit	17
	20	Public entertainment[21]	90 days	Any contractor	$3,000[6]	17
	17	Dependent personal services[17,18-19]	183 days	Japanese resident	No limit	18
	18	Teaching[7]	2 years	U.S. educational institution	No limit	19
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	20(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.[6]	20(1)
		Compensation while gaining experience	12 consec. mo.	Japanese resident	$5,000[6]	20(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000[6]	20(3)
Korea, Rep. of	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	21(1)
	16	Independent personal services[7,22]	182 days	Any contractor	$3,000 p.a.	18
	17	Dependent personal services[17]	182 days	Korean resident	$3,000 p.a.	19
	18	Teaching[7]	2 years	U.S. educational institution	No limit	20
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	21(1)
		Compensation during training	5 years	Any foreign or U.S. resident	$2,000 p.a.	21(1)
		Compensation while gaining experience	1 year	Korean resident	$5,000	21(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	21(3)
Luxembourg	15	Scholarship or fellowship grant	No limit	Any foreign resident	No limit	XIV(1)
	16	Independent personal services[22]	180 days	Luxembourg resident	No limit	XII
			180 days	Any U.S. or foreign resident	$3,000	XII
	17	Dependent personal services[17]	180 days	Luxembourg resident	No limit	XII
			180 days	Any U.S. or foreign resident	$3,000	XII
	18	Teaching[7]	2 years	U.S. educational institution	No limit	XIII
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	XIV(1)
		Compensation during training	1 year	Any foreign resident	No limit	XIV(1)
		Compensation while gaining experience[7]	1 year	Any foreign resident	$5,000	XIV(2)
		Compensation under U.S. Government program	1 year	U.S. Government, its contractor, or a foreign resident	$10,000	XIV(3)

Table 2.—Continued

Malta	16	Independent personal services[7,22]	90 days	Any foreign contractor	No limit	14
			90 days	Any U.S. contractor	$10,000 p.a.	14
	20	Public entertainment[22]	89 days	Any contractor	$500 per day or $5,000 p.a.	18
	17	Dependent personal services[17]	183 days	Any foreign resident	No limit	15
	20	Public entertainment	89 days	Any U.S. or foreign resident	$500 per day or $5,000 p.a.	18
		Directors' fees	No limit	U.S. corporation	No limit[24]	17
	18	Teaching[4]	2 years	Any foreign resident	No limit	21
	19	Studying and training:[23]				
		Remittances or allowances[11]	No limit	Any foreign resident	No limit	22
Morocco	15	Scholarship or fellowship grant[15]	No limit	Any U.S. or foreign resident[5]	No limit	18
	16	Independent personal services[7,22]	182 days	Any contractor[12]	$5,000	14
	17	Dependent personal services[17,18]	182 days	Moroccan resident[13]	No limit	15
	19	Studying and training:[5]				
		Remittances or allowances	5 years	Any foreign resident	No limit	18
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	18
Netherlands	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	XVIII(1)
	16	Independent personal services[22]	183 days	Any contractor	No limit	XVI
	17	Dependent personal services	183 days	Any foreign resident	No limit	XVI
	18	Teaching[4]	2 years	U.S. educational institution	No limit	XVII
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	XVIII(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	XVIII(1)
		Compensation while gaining experience[2]	1 year	Netherlands resident	$5,000	XVIII(2)
New Zealand	16	Independent personal services[7,22]	183 days	Any contractor	No limit	14
	20	Public entertainment[22]	183 days	Any contractor	$10,000	17
	17	Dependent personal services[17]	183 days	Any foreign resident	No limit	15
	20	Public entertainment[17]	183 days	Any foreign resident	$10,000	17
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	20
Norway	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	16(1)
	16	Independent personal services[7,22]	182 days	Any resident contractor	No limit	13
	20	Public entertainment[22]	90 days	Any resident contractor	$10,000 p.a.	13
	17	Dependent personal services[18]	182 days	Norwegian resident	No limit	14
	18	Teaching[4]	2 years	U.S. educational institution	No limit	15
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	16(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	16(1)
		Compensation while gaining experience[2]	12 consec. mo.	Norwegian resident	$5,000	16(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	16(3)

Table 2.—Continued

Country (1)	Code[1] (2)	Category of Personal Services: Purpose (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Pakistan[12]	15	Scholarship or fellowship grant[15]	No limit	Pakistani nonprofit organization	No limit	XIII(1)
	16	Independent personal services[16,22]	183 days	Pakistani resident contractor	No limit	XI
	17	Dependent personal services[16]	183 days	Pakistani resident	No limit	XI
	18	Teaching	2 years	U.S. educational institution	No limit	XII
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	XIII(1)
		Compensation during training	No limit	U.S. or any foreign resident	$5,000 p.a.	XIII(1)
		Compensation while gaining experience[2]	1 year	Pakistani resident	$6,000	XIII(2)
		Compensation while under U.S. Government program	No limit	U.S. Government, its contractor, or any foreign resident employer	$10,000	XIII(3)
Philippines	15	Scholarship or fellowship grant[15]	5 years	Any U.S., or foreign resident[5]	No limit	22(1)
	16	Independent personal services[7,22]	89 days	Any foreign contractor	No limit	15
			89 days	Any U.S. contractor	$10,000 p.a.	15
	20	Public entertainment[22]	No limit	Any contractor	$100 per day or $3,000 p.a.	17
	17	Dependent personal services[17]	89 days	Any Philippines resident	No limit	16
	20	Public entertainment	No limit	Any U.S. or foreign resident	$100 per day or $3,000 p.a.	17
	18	Teaching[4]	2 years	U.S. educational institution	No limit	21
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	22(1)
		Compensation during study	5 years	Any U.S. or foreign resident	$3,000 p.a.	22(1)
		Compensation while gaining experience[2]	12 consec. mo.	Philippines resident	$7,500 p.a.	22(2)
		Compensation while under U.S. Government program	1 year	U.S. Government or its contractor	$10,000 p.a.	22(3)
Poland	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident	No limit	18(1)
	16	Independent personal services[22]	182 days	Any contractor	No limit	15
	17	Dependent personal services[17]	182 days	Any foreign resident	No limit	16
	18	Teaching[4]	2 years	U.S. educational institution	No limit	17
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	18(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	18(1)
		Compensation while gaining experience	1 year	Polish resident	$5,000	18(2)
		Compensation while under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	18(3)
Romania	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	20(1)
	16	Independent personal services[22]	182 days	Any contractor	No limit	14
	20	Public entertainment[22]	90 days	Any resident contractor	$3,000	14
	17	Dependent personal services[17]	182 days	Romanian resident	No limit	15
	20	Public entertainment	89 days	Romanian resident	$2,999.99	15
	18	Teaching[4]	2 years	U.S. educational institution	No limit	19
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	20(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	20(1)
		Compensation while gaining experience	1 year	Romanian resident	$5,000	20(2)
		Compensation while under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	20(3)

Table 2.—Continued

Sweden	15	Scholarship or fellowship grant	No limit	Any foreign resident[1]	No limit	XII(1)
	16	Independent personal services[13,22]	180 days	Swedish resident contractor	No limit	XI(b)(1)
			90 days	Other foreign or U.S. contractor	$3,000	XI(b)(2)
	17	Dependent personal services	180 days	Swedish resident	No limit	XI(b)(1)
			90 days	Other foreign or U.S. contractor	$3,000	XI(b)(2)
	18	Teaching[1]	2 years	U.S. educational institution	No limit	XII(3)
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	XII(1)
		Compensation under U.S. Government program	No limit	U.S. Government, its contractor, or any foreign resident employer	$10,000	XII(2)
Switzerland	16	Independent personal services[10,22]	183 days	Swiss resident contractor	No limit	X
			183 days	Other foreign or U.S. contractor	$10,000	X
	17	Dependent personal services[10]	183 days	Swiss resident	No limit	X
			183 days	Other foreign or U.S. resident	$10,000	X
	18	Teaching	2 years	U.S. educational institution	No limit	XII
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	XIII
Trinidad and Tobago	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[7]	No limit	19(1)
	16	Independent personal services[4,22]	183 days	Any foreign resident contractor	No limit	17
			183 days	Any U.S. contractor	$3,000[8]	17
	17	Dependent personal services[14]	183 days	Any foreign resident	No limit	17
			183 days	Any U.S. resident	$3,000[8]	17
	18	Teaching[1]	2 years	U.S. educational institution or U.S. Government	No limit	18
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	19(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.[5]	19(1)
		Compensation during professional training	5 years	U.S. or any foreign resident	$5,000 p.a.[5]	19(1)
		Compensation while gaining experience	1 year	Trinidad—Tobago resident	$5,000[6]	19(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000[6]	19(3)
Union of Soviet Socialist Republics	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident	$10,000 p.a.	VI(1)
	16	Independent personal services[22]	183 days	Any U.S. or foreign contractor	No limit	VI(2)
	17	Dependent personal services	183 days	Any U.S. or foreign resident	No limit	VI(2)
	18	Teaching[1,20]	2 years	U.S. educational or scientific institution	No limit	VI(1)
	19	Studying and training:				
		Remittances or allowances	5 years	Any U.S. or foreign resident	$10,000 p.a.	VI(1)
		Compensation while gaining experience	1 year	U.S.S.R. resident	No limit [21]	VI(1)
		Compensation under U.S. Government program	1 year	Any U.S. or foreign resident	No limit	VI(1)
United Kingdom	16	Independent personal services[2,22]	183 days	Any contractor	No limit[13]	14
	17	Dependent personal services[11]	183 days	Any foreign resident	No limit[13]	15
	18	Teaching[1]	2 years	U.S. educational institution	No limit	20
	19	Studying and training:				
		Remittances or allowances[11]	No limit	Any foreign resident	No limit	21

Table 2.—Continued

[1] Refers to income code numbers described in this publication and to be reported on Forms 1042S. Personal services must be performed by a nonresident alien individual who is a resident of the specified treaty country.

[2] Applies only if training or experience is received from a person other than the alien's employer.

[3] Annual compensation for services wherever performed.

[4] Does not apply to compensation for research work primarily for private benefit.

[5] Grant must be from a nonprofit organization that may be a U.S. or foreign resident. In the case of Sweden the organization must be located outside the United States.

[6] Reimbursed expenses are not taken into account in figuring any maximum compensation to which the exemption applies. For Japan and Trinidad and Tobago, only reimbursed travel expenses are disregarded in figuring maximum compensation.

[7] Exemption does not apply to the extent income is attributable to the recipient's fixed U.S. base. For residents of France and Japan, this fixed base must be maintained in the U.S. for more than 183 days during the tax year for the exemption not to apply; for residents of Belgium, Iceland, Korea, and Norway, the fixed base must be maintained for more than 182 days.

[8] Does not apply to fees of a foreign director of a U.S. corporation.

[9] Does not apply to compensation for research work for other than the U.S. educational institution involved.

[10] Applies to public entertainment in accordance with U.S. reservation rejecting exclusion contained in Art. X(4) of the Switzerland treaty.

[11] Applies only to full-time student or trainee.

[12] Bangladesh has not indicated that it wishes to assume the responsibilities or exercise the rights of the United States—Pakistan income tax treaty.

[13] Does not apply to compensation paid to public entertainers (actors, artists, musicians, athletes, etc.). For Canadian and U.K. resident public entertainers, the exemption does not apply if the gross receipts (including reimbursements) are more than $15,000 in any year. For French resident public entertainers, the exemption does not apply if the gross receipts (including reimbursement) are more than $10,000 in any tax year.

[14] Does not apply to compensation paid to public entertainers in excess of $100 a day.

[15] Does not apply to payments from the National Institutes of Health under its Visiting Associate Program and Visiting Scientist Program.

[16] Exemption applies only if the compensation is subject to tax in the country of residence.

[17] The exemption does not apply if the employee's compensation is borne by a permanent establishment that the employer has in the United States. For Germany, the exemption also does not apply if under a contract the compensation is borne by a permanent establishment that the payer has in the United States.

[18] The exemption applies if the employer is a permanent establishment in the treaty country or a resident of any country other than the treaty country.

[19] This exemption does not apply in certain cases if the employee is a substantial owner of that employer and the employer is engaged in certain defined activities.

[20] The exemption is also extended to journalists and correspondents who are temporarily in the U.S. for periods not exceeding 2 years and who receive compensation from abroad.

[21] Also exempt are amounts of $10,000 or less received from U.S. sources to provide ordinary living expenses.

[22] Withholding at 30% may be required because the factors on which the treaty exemption is based may not be determinable until after the close of the tax year. However, see *Withholding agreements*, and *Final payment exemption*, under *Compensation for independent personal services*, discussed in this publication.

[23] A student or trainee may choose to be treated as a U.S. resident for tax purposes. If the choice is made, it may not be revoked without the consent of the U.S. competent authority.

[24] Does not apply to amounts received in excess of reasonable fees payable to all directors of the company for attending meetings in the United States.

Table 3.—List of Tax Treaties

Country	Official text symbol	General effective date	Citation	Applicable Treasury explanations or Treasury Decision (T.D.)
Australia	TIAS 10773	Dec. 1, 1983	1986–2 C.B. 220	1986–2 C.B. 246.
Austria	TIAS 3923	Jan. 1, 1957	1957–2 C.B. 985	T.D. 6322, 1958–2 C.B. 1038.
Barbados	TIAS	Jan. 1, 1984		
Belgium	TIAS 7463	Jan. 1, 1971	1973–1 C.B. 619	
Protocol	TIAS	Various		
Canada[2]	TIAS	Jan. 1, 1985	1986–2 C.B. 258	
China, People's Republic of	TIAS	Jan. 1, 1987	1988–1 C.B. 414	1987–2 C.B. 298.
Cyprus	TIAS 10965	Jan. 1, 1986	1989–39 I.R.B. 4	1988–1 C.B. 447.
Denmark	TIAS 1854	Jan. 1, 1948	1950–1 C.B. 77	1989–39 I.R.B. 38
Egypt	TIAS 10149	Jan. 1, 1982	1982–1 C.B. 219	T.D. 5692, 1949–1 C.B. 104; T.D. 5777, 1950–1 C.B. 76.
Finland	TIAS 7042	Feb. 28, 1971	1971–1 C.B. 513	1982–1 C.B. 243.
France	TIAS 6518	Jan. 1, 1967	1968–2 C.B. 691	
Protocol	TIAS 7270	Jan. 1, 1970	1972–1 C.B. 438	T.D. 6986, 1969–1 C.B. 365.
Protocol	TIAS 9500	Jan. 1, 1979	1979–2 C.B. 411	
Protocol	TIAS	Oct. 1, 1985	1987–2 C.B. 326	1979–2 C.B. 428.
Protocol	TIAS	Feb. 1, 1989		
Germany, Federal Republic of	TIAS 3133	Jan. 1, 1954	1955–1 C.B. 635	
Protocol	TIAS 5920	Various	1966–1 C.B. 360	T.D. 6122, 1955–1 C.B. 641.
Greece	TIAS 2902	Jan. 1, 1953	1958–2 C.B. 1054	
Protocol	TIAS 2902	Jan. 1, 1953	1958–2 C.B. 1059	T.D. 6109, 1954–2 C.B. 638.
Hungary	TIAS 9560	Jan. 1, 1980	1980–1 C.B. 333	
Iceland	TIAS 8151	Jan. 1, 1976	1976–1 C.B. 442	1980–1 C.B. 354.
Ireland	TIAS 2356	Jan. 1, 1951	1958–2 C.B. 1060	1976–1 C.B. 456.
Italy	TIAS	Jan. 1, 1985		T.D. 5897, 1952–1 C.B. 89.
Jamaica	TIAS 10207	Jan. 1, 1982	1982–1 C.B. 257	
Japan	TIAS 7365	Jan. 1, 1973	1973–1 C.B. 630	1982–1 C.B. 291.
Korea, Republic of	TIAS 9506	Jan. 1, 1980	1979–2 C.B. 435	1973–1 C.B. 653.
Luxembourg	TIAS 5726	Jan. 1, 1964	1965–1 C.B. 615	1979–2 C.B. 458.
Malta	TIAS 10567	Jan. 1, 1982	1984–2 C.B. 339	1965–1 C.B. 642.
Morocco	TIAS 10195	Jan. 1, 1981	1982–2 C.B. 405	1984–2 C.B. 366.
Netherlands	TIAS 1855	Jan. 1, 1947	1950–1 C.B. 93	1982–2 C.B. 427.
Supplemental	TIAS 3366	Nov. 10, 1955	1956–2 C.B. 1116	T.D. 5690, 1949–1 C.B. 92; T.D. 5778, 1950–1 C.B. 92.
Supplemental	TIAS 6051	Jan. 1, 1967	1967–2 C.B. 472	T.D. 6153, 1955–2 C.B. 777.
New Zealand	TIAS 10772	Jan. 1, 1984		
Norway	TIAS 7474	Jan. 1, 1971	1973–1 C.B. 669	
Protocol	TIAS 10205	Jan. 1, 1982	1982–2 C.B. 440	1973–1 C.B. 693.
Pakistan	TIAS 4232	Jan. 1, 1959	1960–2 C.B. 646	1982–2 C.B. 454.
Philippines	TIAS 10417	Jan. 1, 1983	1984–2 C.B. 384	T.D. 6431, 1960–1 C.B. 755.
Poland	TIAS 8486	Jan. 1, 1974	1977–1 C.B. 416	1984–2 C.B. 412.
Romania	TIAS 8228	Jan. 1, 1974	1976–2 C.B. 492	1977–1 C.B. 427.
Sweden	TS 958[3]	Jan. 1, 1940	1940–2 C.B. 43	1976–2 C.B. 504.
Supplemental	TIAS 5656	Various	1965–1 C.B. 626	T.D. 4975, 1940–2 C.B. 43.
Switzerland	TIAS 2316	Jan. 1, 1951	1955–2 C.B. 815	1965–1 C.B. 674.
Trinidad and Tobago	TIAS 7047	Jan. 1, 1970	1971–2 C.B. 479	T.D. 5867,1951–2 C.B. 75; T.D. 6149, 1955–2 C.B. 814.
Union of Soviet Socialist Republics	TIAS 8225	Jan. 1, 1976	1976–2 C.B. 463	1976–2 C.B. 475.
United Kingdom	TIAS 9682	Jan. 1, 1975	1980–1 C.B. 394	1980–1 C.B. 455.

[1] Treaties and Other International Act Series.
[2] The Canadian Treaty also may be found in Publication 597, *Information on the United States—Canada Income Tax Treaty.*
[3] Treaty Series.

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Addendum to Publication 515 Withholding of Tax on Nonresident Aliens and Foreign Corporations (1989 Revision)

Introduction

The Internal Revenue Service does not plan to revise Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Corporations*, this year. You can use the reprint of the 1989 revision (for withholding in 1990) along with this notice, which updates the publication, for 1991 withholding information.

Withholding on Agricultural Labor

If you, as the withholding agent, pay cash wages for agricultural labor, you must withhold income tax from the wages if:

1) You pay an individual worker cash wages of $150 or more during the year, or
2) You pay total cash wages of $2,500 or more to all workers during the year.

Under certain conditions, wages of less than $150 a year paid to a worker are not subject to income tax withholding even if the total amount of wages you paid to all your workers for the year is $2,500 or more. The conditions are that the worker:

1) Is employed in agriculture as a hand-harvest laborer,
2) Is paid piece rates in an operation that is usually paid on a piece-rate basis in the region of employment,
3) Commutes daily from his or her home to the farm, and
4) Had been employed in agriculture less than 13 weeks in the preceding calendar year.

The wages you pay these seasonal workers still count toward the $2,500-or-more test for determining if you have to withhold tax on other workers.

Withholding Tax on Foreign Partners

The rules for a partnership's withholding on income allocable to foreign partners have been clarified and changed effective for tax years beginning after December 31, 1987.

The rate of withholding tax for income allocable to foreign partners that are corporations is 34%.

Also, a foreign partner's share of withholding tax paid by a partnership is treated as distributed to the partner on the earlier of:

1) The day on which the tax was paid by the partnership, or
2) The last day of the partnership's tax year for which the tax was paid.

If a domestic partnership disposes of a U.S. real property interest at a gain, the gain is treated as effectively connected income for purposes of section 1446 of the Internal Revenue Code. If you are the withholding agent for the partnership, you should withhold and pay over the tax under the requirements of section 1446 (see *Partnership Withholding on Effectively Connected Income*), **not** the section 1445(e)(1) requirements (discussed under *U.S. Real Property Interest*). Use Forms 8804, 8805, and 8813 to pay over and report the tax withheld.

When you withhold tax on the partnership disposition of U.S. real property under the section 1446 requirements, you have satisfied the requirements of section 1445(e)(1).

If the partnership is a publicly traded partnership, report tax withheld under section 1446 on Forms 1042 and 1042S using Income Code 27, unless the partnership is making or has made an election to withhold on effectively connected taxable income allocable to foreign partners as discussed under *Publicly Traded Partnerships*. Also see the instructions for Forms 1042 and 1042S for more information.

Forms 1042 and 1042S

There are two changes to the Income Codes on Form 1042S, *Foreign Person's U.S. Source Income Subject to Withholding*. The title of Income Code 25 is now "Trust distributions subject to IRC section 1445," and there is a new Income Code 27 titled "Publicly traded partnership distributions subject to IRC section 1446."

Penalties. New penalties may be imposed if you fail to file correct Forms 1042 and 1042S. A penalty of $50 may be imposed for each Form 1042 that is not filed at all or is not filed correctly by August 1, with a maximum penalty of $250,000 per year.

The penalty may be reduced to:

1) $30 for each Form 1042 if the correct information is filed more than 30 days after the due date but by August 1, with a maximum penalty of $150,000 per year.
2) $15 for each Form 1042 if the correct information is filed within 30 days after the due date, with a maximum penalty of $75,000 per year.

A $50 per form penalty will be imposed if you fail to provide each payee with a Form 1042S with all the required information correctly completed, with a maximum penalty of $100,000.

These penalties are applicable to Forms 1042 and 1042S due after December 31, 1989.

Address for Substitute Forms

As discussed in this publication, to use a substitute Form 1042S, you generally must get prior approval each year.

The correct address for requesting approval of substitute forms is: Internal Revenue Service, Attention: Substitute Forms Program Coordinator, R:R:R, 1111 Constitution Ave., N.W., Washington, D.C. 20224. For specific information on substitute forms, see Revenue Procedure 90-8, 1990-3 IRB 10.

Deposits of Withheld Taxes

The penalty for failure to make deposits of withheld taxes on time has been changed. The penalty is no longer 10% of the underpayment, but is now based on the number of days the tax deposit is late. The penalty is as follows:

1) 2% of the underpayment for the first 5 days,
2) 5% of the underpayment for the 6th through the 15th day,
3) 10% of the underpayment for more than 15 days, and
4) 15% of the underpayment if the deposit is not made within 10 days after the IRS issues the first notice demanding payment.

Form 1078

The instructions for Form 1078, *Certificate of Alien Claiming Residence in the United States*, have changed. A copy of the form is no longer required to be filed with the Internal Revenue Service Center in Philadelphia. You, as the withholding agent, should keep the certificate.

New Toll-Free Telephone Number

The IRS has a new toll-free telephone number for ordering tax forms and publications. The new number is 1-800-TAX-FORM (1-800-829-3676).

Withholding Tables in Publication 515

You may use the withholding tax rates in Table 1 and the information in Tables 2 and 3 in this revision of Publication 515 for withholding in 1991.

U.S.-Guam Implementing Agreement

The implementing agreement between the United States and Guam goes into effect on January 1, 1991. Therefore, beginning in January 1991, Guam corporations are treated the same as American Samoa and Virgin Islands corporations as covered in the discussion on page 2 of this revision of Publication 515.

Corporations created or organized in the Commonwealth of the Northern Mariana Islands (CNMI) will be included in the discussion mentioned above only when an implementing agreement between the United States and the CNMI takes effect.

Daily Exemption Amount for 1991

The daily exemption amount for 1991 withholding is $5.89. It is figured by dividing the personal exemption for 1991 ($2,150) by the 365 days in 1991.

New Form 8822, Change of Address

If you change your mailing address, be sure to notify the IRS using Form 8822, *Change of Address.* Mail it to the Internal Revenue Service Center for your old address (addresses for the Service Centers are on the back of the form). If you are changing both your home and your business addresses, you should complete separate forms.

Forms 8288 and 8288-A

When filing these forms and paying the tax withheld on the disposition of a U.S. real property interest, send Form 8288 and copies A and B of Form 8288-A to: FIRPTA Unit, Internal Revenue Service Center, Philadelphia, PA 19255.

Tax Treaties

The United States has recently exchanged instruments of ratification for new income tax treaties with Finland, Indonesia, and Spain.

Under the new treaty with Finland, the provisions for withholding U.S. tax at source are effective for amounts paid or credited after January 31, 1991. The U.S. withholding provisions on interest, dividends, and royalties under the treaty with Indonesia are effective for amounts paid or credited after January 31, 1991, and, for all other amounts, after 1989. Under the treaty with Spain, the treaty provisions on interest, dividends, and royalties are effective for amounts paid or credited after 1990, and, for all other income, for tax years beginning after 1990.

How to Get IRS Forms and Publications

You can order tax forms and publications from the IRS Forms Distribution Center for your state at the address below. Or, if you prefer, you can photocopy tax forms from reproducible copies kept at many participating public libraries. In addition, many of these libraries have reference sets of IRS publications which you can read or copy.

If you are located in:	Send to "Forms Distribution Center" for your state
Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming	Rancho Cordova, Ca. 95743-0001
Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin	P.O. Box 9903, Bloomington, IL 61799
Connecticut, Delaware, District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia	P.O. Box 25866, Richmond, VA 23289

Foreign Addresses—Taxpayers with mailing addresses in foreign countries should send their requests for forms and publications to: Forms Distribution Center, P.O. Box 25866, Richmond, VA 23289; Forms Distribution Center, Rancho Cordova, Ca. 95743-0001, whichever is closer.

Puerto Rico—Forms Distribution Center, P.O. Box 25866, Richmond, VA 23289

Virgin Islands—V.I. Bureau of Internal Revenue, Lockharts Garden, No. 1A, Charlotte Amalie, St. Thomas, VI 00802

Detach at This Line

Order blank—We will send you 2 copies of each form and 1 copy of each set of instructions or publication you circle. Please cut the order blank on the dotted line above and **be sure to print or type your name and address accurately on the bottom portion.** This will be the label used to return material to you. Enclose this order blank in your own envelope and address your envelope to the IRS address shown above for your state. To help reduce waste, please order only the forms, instructions, and publications you think you will need to prepare your return. Use the blank spaces to order items not listed. If you need more space, attach a separate sheet of paper listing the additional forms and publications you may need. Be sure to allow 2 weeks to receive your order.

1040	1040EZ	Schedule R (1040) & Instructions	2441 & Instructions	8582 & Instructions	Pub. 508	Pub. 553	
Instructions for 1040 & Schedules	Instructions for 1040EZ	Schedule SE (1040)	3468 & Instructions	8822	Pub. 521	Pub. 590	
1040A	Schedules A&B (1040)	1040-ES (1991)	3903 & Instructions	Pub. 1	Pub. 523	Pub. 910	
Instructions for 1040A, Sch. 1&2	Schedule C (1040)	1040X & Instructions	4562 & Instructions	Pub. 17	Pub. 525	Pub. 917	
Schedule 1 (1040A)	Schedule D (1040)	2106 & Instructions	4868	Pub. 334	Pub. 527	Pub. 929	
Schedule 2 (1040A)	Schedule E (1040)	2119 & Instructions	8283 & Instructions	Pub. 463	Pub. 529		
Schedule 3 (1040A) & Instructions	Schedule F (1040)	2210 & Instructions	8332	Pub. 505	Pub. 545		

Internal Revenue Service

Name
Number and street
City or town, State, and ZIP code

*U.S. Government Printing Office: 1990 — 282-015/20029